(24,018)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 338.

CHIENG AH SUI, APPELLANT,

vs.

HENRY B. McCOY, INSULAR COLLECTOR OF CUSTOMS OF THE PHILIPPINE ISLANDS.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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a THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

[Seal Corte Suprema, Islas Filipinas.]

PHILIPPINE ISLANDS,
City of Manila, ss:

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the following as a true transcript and translation of certain proceedings had before the Board of Special Inquiry of the Bureau of Customs (pp. 1 to 40), in the Court of First Instance of the City of Manila (pp. 41 to 60) and in the Supreme Court of these Islands in case numbered 8110 in the trial Court and bearing No. 6579 on the docket of the Supreme Court:

1 Cases Nos. 1 and 2.

C. B. R. No. 1044.

Office of the Insular Collector of Customs, Manila.

Proceedings of the Board of Special Inquiry at the Port of Manila for the Prompt Determination of all Cases of Aliens Detained under the Provisions of the Law, Appointed by the Acting Insular Collector of Customs April 18, 1907.

Session (A. M.) July 19, 1910.

Present: Brady, Amazeen, Case, Members.

Examination of one CHIANG AH SIU, boy, age 16, and CHIANG AH LUY, boy, age 20, detained Chinese immigrants, ex s/s "Coblenz," July 19, 1910.

1. Q. What is your name?
A. Chiang Ah Siu.
Q. How old are you?
A. 16.
2. Q. And what is your name?
A. Chiang Ah Luy.
Q. How old are you?
A. 20.

NOTE.—Mr. Cole, representing the detained, present.

Q. Where are you boys coming from?
A. Hongkong.
Q. Who are you coming with?

A. Our father.
Q. What is your father's name?
A. Chiang Ah Soon.
Q. Why are you coming here now?
A. Our father brought us here to study business.
Q. Is your mother alive?
A. Yes.
Q. What is your mother's name?
A. We do not know.
Q. Is your mother alive?
A. Yes.
2 Q. What is her surname.
A. Chan.
Q. Well, what is your mother's name?
A. How can we know our mother's name?
Q. Probably Chan See?
A. Her surname is Chan.
Q. Where is your home in China?
A. Chung Hao.
Q. Do both of you boys have the same father and mother?
A. Yes.
Q. Have you any brothers or sisters?
A. One more younger brother.
Q. State his name and age.
A. Ah Wing, age 9, and one sister, Ah Pec, age 3.

(Questions addressed to AH SIU:)

Q. What is your name?
A. Ah Siu.
Q. Have you any other name?
A. No, only Ah Siu.

(Questions addressed to AH LUY:)

Q. Have you any other brothers?
A. No.
Q. Have you a brother by the name of Ah Ping?
A. No.
Q. Have you a brother by the name of Ah Sim?
A. No.
Q. Have you a brother by the name of Ah Fua?
A. No.
Q. Did you hear of anybody by the name of Ah Fua?
A. No.
Q. Did any of your brothers die?
A. I do not know, may be when I was a small boy.

(Question addressed to AH SIU:)

Q. How many brothers have you counting yourself, three?
A. Yes.
Q. What are their names?

A. Ah Luy, I am the next, and Ah Wing.
3 Q. Any sisters?
A. Ah Pec.
Q. Where is your home in China?
A. Chung Hao.
Q. Is there anybody at home called Ah Fua?
A. Do you mean Fu, my father?
Q. You never heard of anybody by the name of Ah Fua?
A. No.

Father called.

Q. What is your name?
A. Cheung Ah Soon.
Q. How old are you?
A. 45.
Q. What is your business?
A. Importation business.
Q. Where?
A. Nos. 79 and 81 Calle San Jacinto, and also No. 27 Calle Poblete.
Q. What is the firm name?
A. Kong Kee Chan firm.
Q. Do you understand the nature of an oath?
A. Yes.
Q. Arise and be sworn.

(He is duly sworn.)

NOTE.—The records of this office show that Cheung Ah Soon was permitted to land at this Port, ex s/s "Coblenz," July 19th, 1910, on identification, as a returning resident Chinese merchant, presenting at the time of his arrival, merchant's affidavit No. 8136, indorsed by this Office, August 23rd, 1909, wherein it is represented that he is engaged in the grocery business at Nos. 79 & 81 Calle San Jacinto.

Q. Are you a married man?
A. Yes.
Q. What is your wife's name.
A. Chan See.
Q. Is she your legitimate wife?
A. Yes.
Q. Is she living?
A. Yes.
Q. Where is your home in China?
A. Chung Hao.
4 Q. Have you any children by your wife Chan See?
A. Yes.
Q. How many?
A. Three boys and a daughter.
Q. State their names and ages.
A. Ah Luy, 20; Ah Siu, 16, and Ah Wing, 8, and a daughter, Pec, 3.

Q. What are the names of the boys you are bringing here now?
A. Ah Luy and Ah Siu.
Q. Are they your legitimate minor sons?
A. Yes.
Q. Not adopted sons?
A. No.
Q. Not bought sons?
A. No.
Q. Who is Ah Fua?
A. Who is named Ah Fua?
Q. Before you went to China you said you had a son by the name of Ah Fua?
A. No, no, no.
Q. You didn't say anything about a boy by the name of Ah Fua?
A. No, I didn't mention that.
Q. You said your second boy was Ah Wing, you said that he was 15 years of age.
A. No, the third son is Ah Wing.
Q. How old is Ah Wing?
A. 8.
Q. 8 or 9?
A. 8, and he will be 9 next month.
Q. You didn't mention anybody by the name of Ah Fua?
A. No.
Q. And you didn't mention Ah Siu?
A. Yes, Ah Siu.
Q. You didn't mention Ah Suy?
A. No.

NOTE.—These questions are asked in view of the fact that the Inspector's Slip, dated July 3, 1909, attached to merchant's affidavit No. 8136, represents that Ah Soon, when examined with regard to his family, prior to his departure for China, stated that he had three sons, Ah Luy, 19; Ah Wing, 15, and Ah Fua, 8, and one daughter, Ah Pec, 2.

5 Q. Have you any witnesses?
A. Yes.
Q. Call them.

1st witness:

Q. What is your name?
A. Cheung Tip.

NOTE.—He presents C/R No. 17810/38631, Manila. The witness has no cedula for the current year, as he is just returning from China.

Q. How old are you?
A. 27.
Q. What is your occupation?
A. Carpenter.
Q. Where do you live?

A. No. 138 Lacoste.
Q. Where do you work?
A. Any place.
Q. Do you understand the nature of an oath?
A. Yes.
Q. Arise and be sworn.

(He is duly sworn.)

Q. Do you know this man?
A. Yes.
Q. What is his name?
A. Cheung Soon.
Q. How long have you known him?
A. 21 or 22 years.
Q. Are you related to him?
A. No.
Q. Do you come from the same town as he does?
A. Yes.
Q. What is the name of that town?
A. Chung Hao.
Q. Is he a married man?
A. Yes.
Q. What is his wife's name?
A. I do not know her name.
Q. What is her family name?
A. Chan.
Q. Is she his legitimate wife?
A. Yes.
Q. Is she alive?
A. Yes.
Q. Has he any children by her?
A. Yes, three boys and one girl.
6 Q. State their names and ages.
A. Ah Luy, 20, Ah Siu, 16, and Ah Wing, 8, and a daughter, Ah Pec, 4.
Q. What are the names of the boys he is bringing here now?
A. Ah Luy and Ah Siu.
Q. Are they the legitimate minor sons of Ah Soon?
A. Yes.
Q. Not adopted sons?
A. No.
Q. Not bought sons?
A. No.
Q. Can you identify them now?
A. Yes.
Q. When was the last time you saw them?
A. I came on the same ship with them.

NOTE.—The witness is given an opportunity to identify the detained, and does so, picking them out from amongst a number of other boys present.

2nd witness.

Q. What is your name?
A. Chung Ah Choy.

NOTE.—He presents C/R No. 4876/15059, Manila. The witness has no cedula for the current year, as he is just returning from China.

Q. How old are you?
A. 46.
Q. What is your occupation?
A. Barber.
Q. Where do you live?
A. No. 138 Lacoste.
Q. Do you understand the nature of an oath?
A. Yes.
Q. Arise and be sworn.

(He is duly sworn.)

Q. Do you know this man?
A. Yes.
Q. What is his name?
A. Cheung Soon.
7 Q. How long have you known him?
A. A long time.
Q. Are you related to him?
A. Yes.
Q. What is the relationship?
A. Same surname.
Q. Do you come from the same town as he does?
A. Yes.
Q. What is the name of that town?
A. Chung Hao.
Q. Is he a married man?
A. Yes, if he is not married how can he have children?
Q. What is his wife's name?
A. Chan See.
Q. Is she his legitimate wife?
A. Yes.
Q. He has no other wife?
A. No.
Q. Has he any children by her?
A. Yes.
Q. How many?
A. Three sons and a daughter.
Q. State their names and ages of the boys.
A. Ah Luy, 20, Ah Siu, 16, and Ah Wing, 8, and a daughter, Ah Pec, 3 or 4.
Q. What are the names of the boys he is bringing here now?
A. Ah Luy and Ah Siu.
Q. Are they the legitimate minor sons of Ah Soon?
A. Yes.

Q. Not adopted sons?
A. No.
Q. Not a bought sons?
A. No.
Q. Can you identify them now?
A. Yes.
Q. When was the last time you saw them?
A. I came on the same ship with them.

NOTE.—Throughout the testimony of the 2nd witness, his answers were given in a very halting and hesitating manner, which would seem to indicate that he is not very familiar with the facts in the case.

AH SIU recalled:

8 Q. Do you know this man? (indicating the 2nd witness).
A. Yes.
Q. What is his name?

(No answer.)

AH LUY recalled:

Q. Do you know this man?
A. Yes.
Q. What is his name?
A. Ah Choy.

Father recalled:

Q. Have you any more witnesses?
A. I will have to go out and get them.
Q. Were you ever rejected before you filed this affidavit?
A. Only this time.
Q. You never filed an affidavit before?
A. Never.
Q. Does William Kennedy know your family?
A. No, none of my partners know my family.

(Questions by Mr. AMAZEEN:)

Q. Why not, did you just come into the firm a stranger?
A. I am not related to them at all.
Q. You had better go out and get some other witnesses.
A. How many?
Q. As many as you want to bring.

NOTE.—The case is continued pending the arrival of more competent witnesses.

9 NOTE.—The records of the Office show the following in reference to Affidavit No. 8136 of Ah Soon.

This affidavit was filed July 3rd, 1909, and given No. 8136, and an investigation was duly had in respect to the status of Ah Soon as outlined and set forth in said affidavit. The investigation shows

that the firm at Nos. 79 & 81 Calle San Jacinto, Manila, consisted of eleven partners and a gross capital claimed to the amount of P33,000, that the firm at Nos. 78 & 81 Calle San Jacinto, Manila, consisted of distributed equally among such eleven partners. The notes attached show that the business is not registered in the Commercial Registry, and that the provisions of Circular No. 191 debarred the applicant from indorsement as a merchant, and that the applicant also admitted that he had been in the provinces, having but recently returned from Subig, where he had been engaged as a carpenter. It is further shown that under the rules and decisions of the Office, that the business was not large enough to warrant the indorsement of eleven partners as merchants, and that changes in the firm had taken place during the absence of several members, and that the applicant also was a contractor and could not be found in the store at the time of the investigation, and furthermore, that he could not qualify under the confidential instructions issued by the Collector of Customs to this Division in such cases. The applicant was refused indorsement therefore by the Chief of the Immigration Division and no appeal was made from such action of the Chief of the Immigration
10 Division in the manner and form prescribed, but in lieu thereof is a memoranda as follows: "Ferrier: Give this man a merchant's Certificate so he can leave here tomorrow. (Sgd.) McCoy." (not dated); another memoranda, dated 8/23/09: "Mr. Amazeen: This man will call at your office at 4 o'clock for this certificate. (Sgd.) Ferrier;" another memoranda, dated Aug. 23, 1909: "Get C/R. Certificate of Residence not filed, Aug. 23, 1909. (Sgd.) J. B. A. The indorsed merchant's affidavit presented bears the following indorsement: "Rejected. Indorsed on reconsideration by the Acting Insular Collector of Customs", together with the customary indorsement, as follows: "Port of Manila, August 23, 1909. Subject to identification, the Chinese person named herein may be admitted to land upon his return to this Port, his right thereto having been already prima facie determined. (Sgd.) J. B. Amazeen." Which indorsement was made almost two months after the original date of filing of the application.

11 Session: (P. M.) July 19, 1910.

Present: Brady, Amazeen, Case, Members.

NOTE.—Mr. Cole, counsel for the detained, now appears and states that the father has no friends in Manila who know his family, and that there is only one man here at all who knows anything about his family, whom he states is at present in Olongapo. The case is submitted for disposition and decision.

NOTE.—The members of the Board then proceeded to consider and discuss the facts of the case.

Decision.

A review of the record in this case will disclose the following:

One Chiang Ah Luy and Chiang Ah Siu arrived at this Port, ex s/s "Coblenz", July 19th, 1910, claiming admission to the Philippine Islands on the ground that they are the legitimate minor sons of a merchant.

When examined, they stated that their father was one Cheung Ah Soon, who accompanied them from China; that they are now coming to the Philippine Islands for the purpose of learning business under their father's direction. The said Cheung Ah Soon appeared and testified that the said Chiang Ah Luy and Chiang Ah Siu were his legitimate minor sons. The records of this Office show that Cheung Ah Soon, when examined with regard to his family, prior
12 to his departure for China, did not mention any boy by the name of Siu. He at that time stated that his second son was named Wing; whereas on this examination he stated that his youngest son was named Wing and his second son was Siu, one of the boys that he is bringing here now.

Two witnesses, Chinese, who arrived on the same ship with him, testified that they were acquainted with Cheung Ah Sun, and his family in China, and that they knew the detained Ah Luy and Ah Siu to be the legitimate minor sons of the said Cheung Ah Soon. The Board was not satisfied, however, with their testimony, and in view of the discrepancies between the entire testimony now given and the statements made by the father prior to his departure for China, the Board required further proof as to the relationship claimed, but Ah Soon stated that he was unable to furnish same.

With regard to the first boy, Ah Luy, he bears such a striking resemblance to his said father, Ah Soon, that there is no doubt in the minds of the Board that the relationship claimed is bona fide. With regard to the second boy, Ah Siu, the Board finds that he bears no resemblance to his alleged father, and in view of the discrepancies as above stated and the general unsatisfactory testimony to support the claim of relationship, the Board decides that Ah Soon has failed to establish that the said Ah Siu is his legitimate minor son.

Concerning the status of Ah Soon as a resident Chinese merchant, the majority of the Board finds that he was duly indorsed as a merchant and a partner of the firm at Nos. 79 & 81
13 Calle San Jacinto, and that he returned to this Port and was permitted to land on identification, in accordance with the indorsement on the merchant's affidavit presented by him. His right to be accompanied by his legitimate family is fully covered by Chinese and Immigration Circular No. 206. The theory is, if he is permitted to land as a member of the exempt class, his family is entitled to enter with him.

The Board therefore decides that Chiang Ah Luy is the legitimate minor son of Cheung Ah Soon, a resident Chinese merchant, as described in merchant's affidavit No. 8136, indorsed by this Office, Au-

gust 23, 1909. He is, therefore, permitted to land as the legitimate minor son of a resident Chinese merchant.

In the case of Chiang Ah Siu, the Board decides that he has failed to establish his claim that he is the legitimate minor son of Cheung Ah Soon. He is, therefore, refused landing. He is informed of this decision, and he is further informed that he will have two (2) days from this date within which to appeal to the Insular Collector of Customs, should he feel dissatisfied therewith. Mr. Cole, representing the detained, is likewise so informed.

(Signed) WILLIAM C. BRADY,
Member of the Board.

(See Dissenting Opinion) Member.

(Signed) H. E. CASE,
Stenographer.

Dissenting Opinion.

The undersigned respectfully dissents from the finding and
14 decision of the Board in respect to the boy Ah Luy, on the grounds and for the reasons that the said Ah Soon has never actually established his status as a merchant. It appears that he was granted an indorsement to merchant's affidavit No. 8136, August 23, 1909, for special purposes never made known to the Immigration Division so far as the records are concerned and from the facts appearing in the investigation of said merchant's affidavit, the said Ah Soon was not entitled to indorsement under the rules and regulations of this office. The undersigned therefore decides that the said Ah Soon is not a merchant and that the endorsement to his merchant's affidavit was granted for special purposes solely, and that it was not the intention nor expectation that he should make use of such merchant's affidavit for the purpose of landing minor sons contrary to the usual rules and practice of this Office. The undersigned believes that the said Ah Luy, as well as the said Ah Siu, should be refused landing.

(Signed) JOHN B. AMAZEEN,
Member.

icq.

15 MANILA, P. I., July 19, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: Please accept notice of appeal from the decision of the Board of Special Inquiry in refusing admission at this port to Cheung Ah Sui, age 13, Chinese immigrant, ex s/s "Coblenz", this date.

Respectfully,
(Signed) GEO. W. COLE.

icq.

Rec'd July 19, 1910.
(Sgd.) W. C. B.

MANILA, P. I., July 20, 1910.

In re: Chiang Ah Siu, boy, age 16.
Case No. 1, C. B. R. No. 1044.
Ex s/s "Coblenz" July 19, 1910.

Respectfully transmitted to the Insular Collector of Customs for review on appeal. The facts of the case, together with grounds for adverse decision, appear fully in the attached record.

(Signed) JOHN B. AMAZEEN,
Chairman of the Board.

icq.

Respectfully transmitted—July 21, 1910.
J. B. A.,
Chief Immigration Division.

16 MANILA, P. I., July 22, 1910.

The Insular Collector of Customs, Manila.

SIR: I respectfully request that Chiang Ah Siu, ex s/s "Coblenz" July 19, 1910, be granted a re-hearing, Chiang Chow, a chinaman who knows the family of this applicant and who was in Olongapo when the case was heard is now in Manila and can testify before the Board at any time convenient.

Respectfully,
(Signed) GEO. W. COLE.

icq.

17 (Marked.)

8110—EXHIBIT "A".

Cases Nos. 1 and 2. C. B. R. No. 1044.

Office of the Insular Collector of Customs, Manila.

Rehearing.

Proceedings of the Board of Special Inquiry at the Port of Manila, for the Prompt Determination of all Cases of Aliens, Detained under the Provisions of the Law, Appointed by the Acting Insular Collector of Customs, April 18, 1907.

Session: (A. M.) July 23, 1910.

Present: Brady, Rice, Case, Members.

Rehearing in the Matter of one Chiang Ah Siu, Boy, Age 16, Detained Chinese Immigrant, ex s/s "Coblenz", July 19th, 1910.

Present, the detained, with his representative, Mr. Cole.

This case comes before the Board on a request for rehearing, signed by Mr. George W. Cole, under date of July 22nd, 1910, for

the purpose of presenting before the Board the evidence of one witness who knows the family of Ah Soon. This witness, on the original hearing, could not be present, for the reason that he was then in Olongapo. The request for rehearing is approved by the Insular Special Deputy Collector of Customs.

18 Detained called.

Q. What is your name?
A. Chiang Ah Siu.

1st Witness:

Q. What is your name?
A. Cheung Chan.

NOTE.—He presents C/R No. 15505/36132, Manila. Cedula No. F-2400, March 1, 1910, Manila.

Q. How old are you?
A. 42.
Q. What is your occupation?
A. Carpenter.
Q. Where do you live?
A. No. 138 Lacoste.
Q. Do you understand the nature of an oath?
A. Yes.
Q. Arise and be sworn.

(He is duly sworn.)

Q. Do you know this man here?
A. Yes.
Q. What is his name?
A. Ah Soon.
Q. How long have you known him?
A. Since a small boy, I live in the same town with him in China.
Q. What is the name of that town?
A. Cheong Hao.
Q. Is he a married man?
A. Yes.
Q. Do you know his wife?
A. Yes.
Q. She has bound feet, or not?
A. Bound feet.
Q. What is her name?
A. Chan See.
Q. Has he any children by her?
A. Yes, three sons and a daughter.
Q. What are their names?
A. Ah Luy, 20, Ah Siu, 16, Ah Wing, 8, and Ah Peck, girl, 4.
Q. What about Ah Fua?

A. Who is Ah Fua?
19 Q. A son of Ah Soon.
A. This man is Ah Soon.
Q. Hasn't he a boy by the name of Ah Fua?
A. No,
Q. Has he a boy 9 years old?
A. No, Ah Wing is 8.
Q. When these two boys came here three days ago, they said that Ah Wing was 9 years of age.—Now, do you know whether he is 8 or 9 years old or do you know just what Ah Soon told you?
A. He is 8 years old, I know it myself.
Q. Has he a boy age 16?
A. Ah Siu is 16.
Q. When was the last time you were in China?
A. I came here five years ago.

NOTE.—The detained is told to step outside the Board room.

Q. Does this boy know you very well?
A. Yes.
Q. There is no mistake about it?
A. No.
Q. He has always known you?
A. I have been to China for several times.
Q. Do you live in the same town as he does?
A. Yes.
Q. What is your wife's name?
A. Lee See.
Q. How many children have you?
A. None.
Q. Who does your wife live with?
A. With my father.
Q. What is your father's name?
A. Chang Yan Kok.
Q. Is he alive?
A. Yes.
Q. You have no children?
A. No.
Q. How far is your house from Ah Soon's house?
A. From here to the Binondo church.

20 Detained recalled.

Q. What is that man's wife's name? (Indicating the witness.)
A. I do not know his wife's name.

NOTE.—The detained glances rapidly at his father and his father was about to say something, but he refrained when he saw the members of the Board looking at him.

Q. What is his name?
A. Cheong Chan.
Q. Does he live in the same town as you do in China?
A. Yes.

Q. How many children has he?
A. I forget how many.
Q. Have you seen his children?
A. Yes.
Q. About how many are there?
A. Do you mean Cheong Chin's children?
Q. Yes.
A. Two sons and a girl.
Q. Do you know their names?
A. I do not remember their names.
Q. Is his father alive or dead?
A. Dead.

Witness recalled.

Q. What is the name of this boy?
A. Chiang Siu.
Q. He is the son of Ah Soon?
A. Yes.
Q. Is he his legitimate son?
A. Yes.

Father recalled.

Q. Have you any more witnesses outside that you wish to present?
A. No.

NOTE.—The members of the Board then proceeded to consider and discuss the facts of the case.

21 *Decision.*

The Board had heard tre additional evidence presented in this case and sees no reason for changing its original adverse decision. One witness has appeared, claiming to be a friend of the family and a coming from the same town. The detained, when questioned with regard to this alleged friend of the family, apparently knew nothing about him at all.

It is therefore decided that the said Chiang Ah Siu has failed to establish his claim as the legitimate minor son of Ah Soon. He is, therefore, Refused Landing. He is informed of this decision and he is further informed that he will have two (2) days from this date within which to appeal to the Insular Collector of Customs should he feel dissatisfied therewith. Mr. Cole, representing the detained, is likewise so informed.

(Signed) WILLIAM C. BRADY,
Chairman of the Board.
(Signed) C. E. RICE, *Member.*
(Signed) H. E. CASE, *Stenographer.*

icq.

22 MANILA, P. I., July 27, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: Please accept notice of appeal from the decision of the Board of Special Inquiry, sitting at the port of Manila, in refusing admission on rehearing to Cheung Ah Sui s/s "Coblenz", July 19, 1910.

Respectfully,
(Signed) GEO. W. COLE.

Received July 27, 1910.
W. C. B.

icq.

MANILA, P. I., July 27, 1910.

In Re: Chiang Ah Siu, boy, age 16.
Case No. 1, C. B. R. No. 1044.
Ex s/s "Coblenz", July 19th, 1910.

Respectfully transmitted to the Insular Collector of Customs for review on appeal on rehearing. The facts of the case, together with grounds for adverse decision, appear fully in the attached record, and original hearing.

(Signed) WILLIAM C. BRADY,
Chairman of the Board.

icq.

Get whole record—J. B. A. (Record upstairs.)

Respectfully transmitted—July 27, 1910.
J. B. A.,
Chief Immigration Division.

23 MANILA, P. I., August 8, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor to ask for reexamination in the case of Chiang Ah Siu, ex "Coblenz", July 19, 1910. This rehearing is requested for the purpose of introducing the following witnesses who were in Olongapo at the time of the original hearing and could not possibly be produced before the board. They were in the city today and will be for one or two days more and it is desired that their testimony should be heard if possible.

Chian Cha, carpenter, 31 years of age, has known the family of the detained since early boyhood. He lived for years very near to the house of the detained in the country village which is their home and left there for the Philippines some fourteen years ago, or just about the time this boy was born. Since that time he has been back to China several times and has always seen and known this boy to be the true and legitimate son of his father.

Chian Pue, carpenter, aged 48, will testify that he has known the family for thirty years; that he did not leave China until some time after this boy was born; that he has a boy of about the same age, and that the two boys were companions and that he is thoroughly

well acquainted with the detained, has known him all his life, and knows that he is the true and legitimate son of his father.

24 It is requested that the testimony of these witnesses be taken orally, but if there is any objection thereto, that an opportunity be given to prepare and present affidavits amplifying as to details the testimony above described. It will be recalled that the testimony of the witnesses in this boy's case was absolutely and entirely satisfactory and the testimony of the boy himself was satisfactory except in this, that he did not appear to be very well acquainted with the family of people who testified in his favor. It is felt that the case is extremely meritorious, that the grounds for rejection are not sufficient, but that before filing any appeal from the decision of the board, it is but proper that the board should hear and cross examine the witnesses who are now available.

Very respectfully,

(Signed) EO. W. COLE.

icq.

25 Case No. 1.

C. B. R. No. 1044.

Office of the Insular Collector of Customs, Manila.

Rehearing.

Proceedings of the Board of Special Inquiry at the Port of Manila for the Prompt Determination of all Cases of Aliens Detained under the Provisions of the Law, Appointed by the Acting Insular Collector of Customs April 18, 1907.

Session (P. M.) August 10, 1910.

Present: Brady, Rice, Case, Members.

Rehearing in the Matter of one CHIANG AH SIU, boy, age 16, Detained Chinese Immigrant, ex. s/s Coblenz, July 19th, 1910.

NOTE.—The record in this case shows that Chiang Ah Siu was refused landing by the Board of Special Inquiry, July 19th, 1910, on the grounds that he was not the son of Ah Soon, a merchant, engaged in business at Nos. 79 and 81 Calle San Jacinto, Manila. The case was returned for rehearing, for the purpose of introducing further testimony as to the relationship, and the detained was again refused landing by the Board of Special Inquiry, July 23rd, 1910, the relationship having not been satisfactorily established.

The case comes before the Board again for rehearing, for the purpose of introducing further witnesses, on a request

26 signed by Mr. George W. Cole, under date of August 8th, 1910, and approved by the Insular Special Deputy Collector of Customs, August 9th, 1910.

Mr. Cole, representing the detained, present, has requested that Mr. Yung Hao Shan be used as an interpreter, as his witnesses state that they have difficulty in understanding the official interpreter, who speaks the Amoy dialect and is not very familiar with their dialect, which is that spoken near Canton.

Present, Chiang Ah Siu, who has been at liberty under bond since —, 1910.

NOTE.—Mr. Yeung Hao Shan, age 28, merchant at No. 291 Calle Jolo, holder of Cedula No. F-4005, January 11th, 1910, Manila, is duly sworn to interpret faithfully in this case.

Q. What is your name?
A. Ah Siu.

1st WITNESS:

Q. What is your name?
A. Chiang Chay.
Q. How old are you?
A. 31.
Q. What is your occupation?
A. Carpenter.
Q. Where do you live?
A. At the present time I am employed. by the government at Grande Island.
Q. Where is your Certificate of Residence?
A. It is in Grande Island, it will arrive here today.
Q. What is the number?
A. No. 14200, Manila.
Q. Have you a cedula?
A. My cedula will also arrive today.
27 Q. Do you know the number of your cedula?
A. I don't remember it.
Q. Where was it issued?
A. In Grande Island.
Q. When?
A. This year, in January.
Q. When will you present it to the Board?
A. It will arrive to-night and I will bring it tomorrow morning.
Q. Do you understand the nature of an oath?
A. Yes.
Q. Arise and be sworn. (He is duly sworn.)

NOTE:—The Triplicate C/R No. 14200/30401, on file in this office, identifies the witness.

Q. Do you know this man here?
A. Yes.
Q. What is his name?
A. Ah Soon.
Q. How long have you known him?
A. I knew him when I was small.
Q. How many years have you been in the Philippine Islands?

A. 15 years.
Q. When was the last time you went back to China?
A. Three years ago.
Q. Do you know this boy?
A. Yes.
Q. Are you related to this boy?
A. I come from the same town.
Q. You come from the same town as Ah Soon?
A. Yes.
Q. What is the name of that town?
A. Chiang Hao.
Q. What is this boy's name?
A. Ah Siu.
Q. Is he the legitimate son of Ah Soon?
A. Yes.
Q. Not an adopted son?
A. No.
Q. Not a bought son?
A. No.
28 Q. How old is the boy?
A. 16.
Q. What year was he born in?
A. From the time of his birth until now, 16 years.
Q. Do you remember the year he was born in?
A. Foreign year?
Q. Kwang Su?
A. Kwang Su 20th.
Q. What month?
A. I don't remember the month.
Q. How many other children has Ah Soon?
A. Three sons and one daughter.
Q. State their names and ages?
A. The first boy is Ah Luy, 20, Ah Siu, 16, Ah Wing, 8, and Ah Peck, daughter, 4.
Q. How do you know all those ages?
A. I live very near to them.
Q. Didn't Ah Soon tell you within the last few days their names and ages?
A. No, I know them in China, I also know their mother.
Q. Do you know the age of their mother?
A. Yes.
Q. How old is their mother?
A. About 40.
Q. Do you know the age of Ah Soon?
A. Yes.
Q. How old is Ah Soon?
A. 45.
Q. Do you know the names and ages of all the people that come from Chiang Hao?
A. No.

Q. Well, how is it you know the names and ages of Ah Soon's family, himself and wife?

A. I live just a few houses from him.

Q. The people that live between your house and his house, do you know their names and ages?

A. Yes.

NOTE.—The father is requested to step outside.

29 Q. Who lives next door to Ah Soon?

A. Ah Po.

Q. Give me all the names of the people there and their ages?

A. If they live very near to me I know them, but if they live far away I don't know.

Q. Well, between your house and Ah Soon's?

A. I know them.

Q. Give me their names and ages.

A. Ah Kat.

Q. Is that a man?

A. Yes.

Q. How old is he?

A. He is now 28 years old.

Q. Has he got a wife?

A. Yes.

Q. What is his wife's name?

A. I don't know her name.

Q. How old is she?

A. He is just married, I do not know.

Q. How many houses are there between your house and Ah Soon's house?

A. Two houses, my house is almost opposite Ah Soon's house.

Q. Are there two houses between your house and Ah Soon's house?

A. There is one house a little to the right.

Q. Who lives there?

A. Siang Ping.

Q. How old is he?

A. Over 40.

Q. How many children has he?

A. Four or five.

Q. State their names and ages.

A. Ah Cuy, over 30, Ah San, about 29, and the daughters, Ah Hang, 26, and Ah Sin, 24.

Q. Does Ah Soon know all that family?

A. I don't know whether he knows him or not, he has not been home for a long time to stay.

Q. Does Ah Soon's house stand by itself or are there other houses near his house?

A. On one side there is a house, but on the other side there is none?

Q. Who lives next door to him?

A. Siong Puy.
Q. How old is he?
A. 30.
Q. How many children has he?
A. None.
Q. He lives there by himself?
A. Yes.
Q. Siong Puy has no wife?
A. Yes.

Father recalled.

Q. Do you know Ah Po?
A. Who is Ah Po?
Q. Somebody that lives near to you, between your house an that of this witness?
A. I don't think the name was correctly given.
Q. How far is your house from his house?
A. A few houses; next to his house there is a man by the nam of Ah Po.
Q. When you come out of your door, who lives on the righ hand side of your house, next door to you?
A. Ah Lay.
Q. And who lives on the left hand side?
A. There is mud there.
Q. How many children has Ah Lay?
A. One.
Q. How old is that child?
A. 8 or 9 years.
Q. This man says that Siong Puy lives next door to you?
A. I have two houses, the old house where my mother lives, bu I am not living there now, I am living in the new house.
Q. Well, he says next door to you.
A. I have two houses, do you mean the one where I am living o the old one?
Q. We are talking about the house where you live?
A. Both houses are now occupied.
Q. Do you know Siang Ping?
A. Yes.
Q. Who is he?
A. My relative.
Q. Where does he live?
A. Next to my house.
Q. How far from the witness' house?
A. Just a little bit opposite.
Q. Has Siang Ping any children?
A. Yes.
Q. Do you know their names and ages?
A. Yes.
Q. How old is the oldest one?
A. 28 or 29.

Q. What name?
—. Ah Cuy.
Q. Who is the youngest?
A. He has two sons, the second is dead.
Q. Who is the youngest one alive?
A. There were only two, and now only one remains.
Q. Who is the youngest alive?
A. There is only one son.
Q. Has he any daughters?
A. No.
Q. This man says he has two daughters?
A. I don't know, I didn't see any.

1st witness recalled.

(Question by Mr. COLE:)

Q. You have a boy about the same age as this boy (the detained)?
A. No.

2nd Witness:

(Questions by Mr. BRADY:)

Q. What is your name?
A. Cheung Kwei.
Q. How old are you?
A. 48.
Q. What is your occupation?
A. Carpenter.
Q. Where do you live?
A. No. 138 Calle Lacoste.
Q. Where do you work?
A. Grande Island, Olongapo.

NOTE.—He presents C/R No. 17869/39794, Manila, Cedula No. F-475756, Olongapo, March 25th, 1910.

32 Q. Do you understand the nature of an oath?
A. Yes.

Q. Arise and be sworn.

(He is duly sworn.)

Q. Do you know this man?
A. Yes.
Q. What is his name?
A. Chiang Ah Soon.
Q. How long have you known him?
A. Since a small boy.
Q. Are you related to him?
A. Yes.

Q. Do you come from the same town as he does in China?
A. Yes.
Q. What is the relationship?
A. Same village.
Q. Is he a married man?
A. Yes.
Q. Is this his boy?
A. Yes.
Q. What is his name?
A. Ah Siu.
Q. Is he the legitimate son of Ah Soon?
A. Yes.
Q. How many children has he?
A. Three more.
Q. State their names and ages?
A. Ah Luy, 20, Ah Siu, 16, Ah Wing, 8, and Ah Peck, 4, daughter.
Q. How is it you know the names and ages of all those children?
A. Because I was there all the time.
Q. Do you know Siang Ping?
A. What?
Q. Siang Ping?
A. I don't know.
Q. He is supposed to be a relative of Ah Soon?
A. I don't know his relatives.
Q. He lives almost within speaking distance of him, very near?
A. Next to Ah Soon's house?
Q. Very near. I don't think it is next.
A. Siang Ping.
Q. Siang, whatever the name was, you have heard it before?
A. I don't know Siang Ping.
Q. Do you know Siang Cuy?
A. Yes.
33 Q. Who is he?
A. He lives next to his house.
Q. Next door?
A. The next house.
Q. The next house to his house or his mother's house?
A. Next to his house, his new house.
Q. How many children has Siang Cuy?
A. No, no children.

(Questions by Mr. COLE:)

Q. You have a boy about the same age as this boy?
A. Yes.
Q. Your boy and this boy were schoolmates together?
A. Yes.
Q. And played together when they were children?
A. Yes.

NOTE.—The members of the Board then proceeded to consider and discuss the facts of the case.

Decision.

A review of the entire record in this case will disclose the following.

Chiang Ah Siu, age 16, and Chiang Ah Luy, age 20, were brought to this Port, per s/s "Coblenz", July 19th, 1910, by one Ah Soon, who claimed them as his legitimate minor sons.

They were examined by a Board of Special Inquiry, which Board found and decided that Chiang Ah Luy was the son of Ah Soon, but that Chiang Ah Siu was not. The case was then appealed to the Insular Collector of Customs. Before the appeal was decided, a request for rehearing was made for the purpose of introducing the testimony of a witness from Olongapo, who claimed to be from the same town as Ah Soon, and a great friend of Ah Soon's family. The detained, however, on cross examination, appeared
34 to know nothing about this witness, and the Board decided that the additional evidence offered was insufficient to warrant reversing the original decision. The case was again appealed to the Insular Collector of Customs, and before the appeal was decided, another request for rehearing was made, for the purpose of introducing two other witnesses, friends of the family, who were in Olongapo at the time of the original hearing. These witnesses have appeared before the Board and have testified with remarkable accuracy the names and ages of all the children of Ah Soon. They explain that they are from the same town as Ah Soon and know his family well, for the reason that their respective houses are very near each other. Their testimony, however, differs with respect to the people who live in their immediate vicinity. This can be readily understood, for the reason that they might be friends of Ah Soon, but not of his neighbors. Nevertheless the Board was not favorably impressed, from their manner of testifying and their testimony in general. It feels that in cases of this nature it is very easy for all the parties concerned to come to an understanding beforehand, with regard to the alleged facts in the case. Ah Soon had ample opportunity to strengthen his case on the first rehearing, which he failed to do.

The Board does not believe that Chan Ah Siu is the legitimate son of Ah Soon. He is, therefore, refused landing. He is in-
35 formed of this decision, and he is further informed that he will have two (2) days from this date within which to appeal to the Insular Collector of Customs, should he feel dissatisfied therewith. Mr. Cole, representing the detained, is likewise so informed.

(Signed) WILLIAM C. BRADY,
Chairman of the Board.

(Signed) C. E. RICE,
Member.

(Signed) H. E. CASE,
Member and Stenographer.

icq.

36 MANILA, P. I., August 11, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: Please accept notice of appeal from the decision of the Board of Special Inquiry in refusing admission on rehearing to Cheung Ah Siu, age 16, Chinese immigrant, ex s/s Coblenz, July 19, 1910.

Respectfully,
(Signed) GEO. W. COLE.

Rec'd. August 12, 1910.
W. C. B.

MANILA, P. I., August 12, 1910.

In re: Chiang Ah Siu, boy, age 16.
Case No. 1, C. B. R. No. 1044.
Ex s/s Coblenz, July 19th, 1910.
icq.

Respectfully transmitted to the Insular Collector of Customs for review on appeal, on rehearing. The facts of the case, together with grounds for adverse decision, appear fully in the attached record.

(Signed) WILLIAM C. BRADY,
Chairman of the Board.

Respectfully transmitted—August 12, 1910.
J. B. A.,
Chief Immigration Division.

37 6065–4665.

September 3, 1910.

In re CHIANG AH SIU, Alien Immigrant Ex-steamship Coblenz, July 19, 1910.

Decision on Appeal on Rehearing.

This case coming on regularly for review upon an appeal filed by Mr. Geo. W. Cole on behalf of the above named alien, after examining the evidence submitted before the Board of Special Inquiry at Manila, and considering the arguments offered by counsel, and being fully advised in the premises, it is by the undersigned adjudged and decided that said appeal be over-ruled and denied for the following reasons:

This applicant arrived at the port of Manila in company with his alleged brother Chiang Ah Luy, and upon examination by the Board of Special Inquiry was refused landing as not being the person he represented himself to be. Chiang Ah Luy was landed by the Board—one member dissenting—as the legitimate minor son of Chiang Ah Soon, indorsed as a resident Chinese merchant on August 23, 1909, affidavit No. 8136.

An appeal was duly taken from this decision of the Board of Special Inquiry, but prior to its determination an application was

made for a re-hearing, which was approved, and the matter again taken before the Board of Special Inquiry which found unanimously that this applicant was not the person he represented himself to be, and that he is not the son of Chiang Ah Soon who claimed to be a resident Chinese merchant and to be his father. From this decision an appeal was also taken, but prior to its disposition a second
38 application for a re-hearing was made and granted, and the matter for a third time taken before a Board of Special Inquiry. This latter Board also unanimously decided against the claim of the applicant.

A careful review of the evidence does not disclose any reason why the decision of the Board of Special Inquiry herein should be over-turned. A full, fair and complete hearing was given this applicant, and there appears from the record to have been no abuse of discretion, power or authority on the part of the several Boards of Special Inquiry investigating the matter. In the absence of such abuse, or a showing of a decision by the Board highly adverse to the evidence submitted, the undersigned cannot and should not reverse the findings of said Board. The decision of the Board is amply warranted from the evidence submitted, as shown by the record.

It is therefore found that Chiang Ah Siu is not the person he represents himself to be; that he is not the son of Chiang Ah Soon as claimed, and he is therefore refused landing.

(Signed) H. B. McCOY,
Insular Collector of Customs.

icq.

39 8110. Ex. B.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands, Bureau of Customs,
Manila, P. I.

September 15, 1910.

In reply please refer to No. 6065–4691.

Mr. H. E. Case, Manila, P. I.

SIR: In reply to yours dated the 14th inst., requesting a rehearing in the case of Chiang Ah Siu, I have to inform you that in this case the records show that three separate and distinct hearings have been given, at each of which testimony was introduced on behalf of the applicant, and that the record of each of these hearings discloses the fact that all witnesses presented were heard. It would seem that this applicant has had every reasonable and necessary opportunity to present any testimony which might have tended to prove his right to enter the Philippine Islands. These hearings were held on July 19, July 23 and August 10, while the decision of the Insular Collector of Customs upon an appeal therefrom was not rendered until September 3—one and a half months after the first

hearing. It would appear that even reasonable diligence would have secured the attendance of any necessary or competent witnesses within the time stated, and prior to the decision of this office on Sept. 3rd.

40 For the foregoing reasons the application for rehearing is denied.

Respectfully,

(Signed) H. B. McCOY,
Insular Collector of Customs.

J.E.F.

41 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 8110.

CHIENG AH SUI, Petitioner,
vs.
INSULAR COLLECTOR OF CUSTOMS, Respondent.

Petition: Habeas Corpus.

Comes now the petitioner and states and shows to the Court his cause of action against the respondent as follows:

1. That the petitioner, Chieng Ah Sui, is the legitimate minor son of Chieng Ah Soon, a Chinese merchant having a mercantile establishment at Nos. 79 and 81 Calle San Jacinto in the city of Manila;

2. That the petitioner arrived in the Philippine Islands from China on the S/S "Coblenz" on July 19, 1910, and applied for admission into the Philippine Islands as the minor son of a resident merchant;

3. That said petitioner was brought before a board of special inquiry, which said board heard a large number of credible witnesses, each and every one of whom testified that the petitioner was in truth and in fact the legitimate minor son of Chieng Ah Soon, that said testimony was wholly uncontradicted;

4. That notwithstanding the testimony above referred to the board arbitrarily, unjustly and against all the evidence and the weight thereof, decided against the right of the petitioner
42 to enter the Philippine Islands on the ground that he was not proven to be a son of Chieng Ah Soon;

5. That thereafter an appeal was taken from the decision of the board of special inquiry to the Insular Collector of Customs, who, proceeding upon a wrong theory and in violation of law, confirmed the decision of the board;

6. That the said board was not duly constituted and had no jurisdiction to exclude from the Philippine Islands this petitioner in a decision wholly upon the provisions of the Chinese Exclusion

Law, nor had the Insular Collector of Customs appellate jurisdiction to pass upon such a case;

7. That on or about September fifth and again on September fourteenth the petitioner sought to bring before the immigration officers at Manila additional testimony, to wit, the testimony of certain witnesses who are related to the family here in question and are thoroughly familiar with the birth and parentage of this petitioner and prepared to testify that he is the true and legitimate minor son of Chieng Ah Soon, which said testimony, if believed, would have resulted in a decision favorable to said petitioner, but the Insular Collector of Customs did on September 15, 1910, unjustly, arbitrarily and in abuse of the authority and discretion in him vested, refuse to permit said witnesses to be heard, and has ordered that the petitioner be deported from the Philippine Islands;

8. That said Insular Collector of Customs now holds illegally the petitioner in custody at the Manila custom-house for the purpose of deporting him from the Philippine Islands, which said custody and detention is not by virtue of any judicial writ or legal
43 process whatsoever;

Wherefore petitioner prays that a writ of habeas corpus issue requiring the Insular Collector of Customs to produce in court the body of the petitioner at a time and place to be stated in the writ, there to abide the further order of the Court in the premises, and that after due hearing, said petitioner be granted his liberty, and for his costs.

(Signed) HARTFORD BEAUMONT,
Attorney for Petitioner.

Manila, September 23, 1910.

Subscribed and sworn to before me this 23rd day of September, 1910.

(Signed) F. CANILLAS,
Assistant Clerk Court of First Instance, Manila, P. I.

UNITED STATES OF AMERICA,
Manila, P. I.:

Part 2.

No. 8110.

The foregoing petition for writ of habeas corpus was presented this 26th of September, 1910, at 10:05 a. m.

(Sgd.) J. McMICKING,
Clerk of the Court of First Instance of Manila, P. I.

Let the writ prayed for issue returnable before me at 9 o'clock in the forenoon of the 4 day of October, 1910.
44 Manila, P. I., Sept. 26, 1912.

(Signed) A. S. CROSSFIELD, *Judge.*

Thereafter and on the 26th day of September, 1910, the writ prayed for in the petition of counsel and granted by the foregoing order of the court was duly issued by the Clerk of the Court of First Instance, ordering the Collector of Customs to bring before the judge issuing the order, or in case of his absence or incapacity, before some other Judge, the person of Chieng Ah Sui, at 9 o'clock in the forenoon of the 4th of October, 1910, commanding him at the same time to make his reply to the same, duly done according to the return of the Sheriff of Manila on the said writ dated September 26, 1910.

Thereafter and on the 27th day of September, 1910, counsel for petitioner was duly notified that the said case would come on for hearing in the Court of First Instance on October 4, 1910, at 9 a. m., receipt of which was acknowledged under date of the 28th of the same month and year.

Thereafter and on the 4th of October, 1910, the Attorney-General, as counsel for the respondent, the Collector of Customs, filed the following answer:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

45 No. 8110.

CHIENG AH SUI, Petitioner,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Respondent.

Habeas Corpus.

H. B. McCoy, Insular Collector of Customs, appears before the Court, and, in reply to the writ of habeas corpus issued by the same in this cause, sets forth as follows:

1. That the petitioner Chieng Ah Sui to whom the petition presented in this cause refers is of Chinese nationality or descent; that coming from a foreign port he arrived at the Port of Manila on the 19th day of July, 1910, and attempted to disembark and to be admitted into the Philippine Islands.

2. That on the 19th day of July, 1910, a Board of Special Inquiry, duly authorized for that purpose, after making investigation in regard to the right of the petitioner to disembark and to be admitted into the Philippine Islands, decided that he did not have such right by reason of not being the son of Chieng Ah Soon who claimed to be the father of the same.

3. That he filed appeal against this decision with the Insular Collector of Customs, but before the latter had decided said appeal the petitioner asked for a new hearing, which was granted him; and at said new hearing the Board of Special Inquiry, after hearing the new evidence presented, ratified its former decision.

4. That soon thereafter he filed a new appeal against this latter resolution with the Insular Collector of Customs, but before said appeal could be decided the petitioner asked for another
46 new hearing, which was granted him, and the Board of Special Inquiry, after said hearing, again ratified unanimously its former resolution.

5. That later the petitioner filed an appeal against the resolution of the Board of Special Inquiry with the Insular Collector of Customs, who affirmed the resolution of said Board on the ground that the petitioner Chieng Ah Sui is not, as alleged a son of Chieng Ah Soon, and consequently has no right to be admitted into the Philippine Islands.

6. That in view of the resolution of the Board of Special Inquiry, affirmed on appeal by the Insular Collector of Customs, there was ordered the deportation of said petitioner to the place from which he came, and the alleged detention of the same is nothing more than a means necessary to insure the due fulfilment of said order of deportation.

7. That the respondent denies all and each one of the allegations contained in the petition of the petitioner, with the exception of those which in this reply are admitted categorically; and makes special denial to the allegation that the Board of Special Inquiry was not duly constituted, that it as well as the Insular Collector of Customs did not have jurisdiction over the matter, and that the latter has acted arbitrarily and with abuse of his discretional power in refusing to admit certain proofs of the petitioners.

8. That in compliance with the writ of habeas corpus issued in this cause, there is presented by the present before the court the person of the petitioner Chieng Ah Sui.

Manila, October 4, 1910.

(Signed) IGNACIO VILLAMOR,
Attorney-General, Attorney for Respondent.

47 Thereafter and on October 5th, 1910, hearing was had in the Court of First Instance of the City of Manila as follows:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part II.

Case No. 8110.

CHIENG AH SUI
vs.
INSULAR COLLECTOR OF CUSTOMS.

Proceedings.

OCTOBER 5TH, 1910.

This case came before the Court for hearing the writ of habeas corpus issued upon the petition of Chieng Ah Sui, alleged to be the legitimate minor son of Chieng Ah Soon.

Mr. Hartford Beaumont appeared in behalf of the petitioner; Sr. F. R. Feria for the Insular Collector of Customs.

Mr. BEAUMONT: I offer in evidence a copy of the proceeding had before the Board of Special Inquiry in relation to this matter, and ask that it be marked Exhibit A.

The COURT: It may be received and will be so marked.

Mr. BEAUMONT: I also offer in evidence a letter of H. B. McCoy, Insular Collector of Customs, dated September 15th, 1910, denying an application for a rehearing, and ask that it be marked Exhibit B.

48 The COURT: It may be received, and will be so marked.

Mr. BEAUMONT: I desire to be sworn as I wish to make a statement in regard to this matter.

The COURT: You may do so.

HARTFORD BEAUMONT, called in behalf of the petitioner, being duly sworn in open court, testified as follows:

Examination by the COURT:

Q. State your name?
A. Attorney at Law. (Should be Hartford Beaumont.)
Q. Where do you live?
A. Manila, P. I.
Q. What is your occupation?
A. Attorney at Law.
Q. How old are you?
A. Thirty-nine years of age.
Q. You desire to make a statement in relation to this matter?
A. Yes, sir.
Q. Proceed.
A. I am attorney for the petitioner in this case. For seven years, up to February 12th, 1910, I was Insular Special Deputy Collector of Customs, and as such was familiar with the circumstances under which Chieng Ah Soon, the father of the petitioner, departed for China. After my resignation I became attorney for Chieng Ah Soon, and while this case was pending in the Custom House met

49 Mr. Ferrier, who was my successor in office, and had charge of handling the case in the Custom House. I had a talk with him regarding this matter and asked him what the difficulty was, and he said that when Chieng Ah Soon departed there was some question as to his right to indorsement as a merchant, but that in view of his agreement to perform some special work for the Government any objection the Government had to the indorsement was waived, and that he went away with the understanding that he should not bring back any of his family; that when he returned he violated that agreement and brought back two members of his family. One of his boys was landed, and the Customs authorities felt that he had received all the favors to which he was justly entitled under the circumstances in that they had permitted him to land one of his children, and that he would have to produce a tre-

mendous amount of testimony before the other one would be admitted. I will add that Mr. Ferrier at that time informed me that the special work entrusted to Chieng Ah Soon was successfully performed, which fact I had not been previously aware of.

The COURT: Is that all you desire to state?

Mr. BEAUMONT: That is all Your Honor. I will now call Cheung Shing Jung.

CHEUNG SHING JUNG, called in behalf of the petitioner, being duly sworn in open court, testified as follows:

Direct examination by Mr. BEAUMONT:

50 Q. State your name?
A. Cheung Shing Jung.

Mr. FERIA: I object to this testimony on the ground that this Court has no jurisdiction to take further testimony in this case.

The COURT: Objection overruled.

Mr. FERIA: Exception.

Q. How old are you?
A. Thirty years old.
Q. What is your occupation?
A. Carpenter.
Q. Where?
A. Calle Lacoste.
Q. From what part of China did you come?
A. From Canton.
Q. Do you know Chieng Ah Soon?
A. Yes sir.
Q. Do you know his family?
A. Yes, sir.
Q. What part of China did they come from?
A. Chieng Hao, Canton Province.
Q. Did you know Chieng Ah Soon and his family in China?
A. Yes, sir.
Q. Do you know this boy here (indicating Chieng Ah Sui)?
A. Yes, sir.
Q. What relation is he, if any, to Chieng Ah Soon?
A. His second boy.
51 Q. How do you know that?
A. Because I am a relative of his.
Q. How long have you known this boy?
A. I have known him since he was a little boy.
Q. How long have you been in the Philippine Islands?
A. About eleven years.
Q. During that time have you been back to China?
A. Yes, sir, twice.
Q. Have you seen this boy on these visits?
A. I saw him every time I went back.

Mr. BEAUMONT: That is all.

Cross-examination by Sr. FERIA:

Q. You say you lived in the same town as this boy?
A. Not in the same village.
Q. What relationship have you with this boy?
A. His father is brother of my mother, he is my uncle.
Q. How many sons has the father of this boy?
A. He has three sons.
Q. Any daughters?
A. One daughter.
Q. How old is the older boy?
A. Twenty years old.
Q. And how old is this boy?
A. He is sixteen years old.
Q. And the next one?
A. Eight years old.
52 Q. How old is the daughter?
A. About four years old, but I am not quite sure.
Q. Is the mother of these children living yet?
A. Yes, sir.
Q. What is her name?
A. Chan See.
Q. Was this boy already born when you left China for the firs time?
A. Yes, sir.
Q. How old was he then?
A. I am now thirty years old, but I forget how old I was then.
Q. But the boy?
A. About six or seven years old, about this high (indicatin about two and a half feet high).
Q. Has he any brother by the name of Ah Fua?
A. Not that I know of, but he may be a cousin; I never hear of him.
Q. Has he any brother by the name of Ah Uy?
A. Yes, sir.
Q. Has he any brother by the name of Ah Sim?
A. No, sir, I do not know that.
Q. Has he any brother by the name of Uy Peng?
A. I do not know any such.
Q. Has he any brother by the name of Ah Luy?
A. Yes, sir, he is the eldest one.
Q. What is the name of the sister?
A. Ah Pec.
53 Q. Was he living with is father and mother before comin to the Philippine Islands?
A. Yes, sir, every time I went there they were living together.
Q. What is the name of the father of this boy?
A. Chieng Ah Soon.
Q. When was the last time you went to China?
A. I came back from China the last time on February 30th Chinese month, April 9th, 1910.

Q. Is the mother of Chieng Ah Soon living yet?
A. No, sir.
Q. Do you know a man by the name of Chung Poy?
A. I do not know him, but I know a man named Chung Quay who lives in the next house to Chieng Ah Soon.
Q. Do you know a man by the name of Ah Kat?
A. No, sir, I am a little too far from his village, I do not know all the names, that is impossible.
Q. Is there any house next to the house of Chieng Ah Soon?
A. There is a house on his right hand side.
Q. And on his left hand side?
A. No, sir.

Sr. FERIA: That is all.
Mr. BEAUMONT: That is all we have to offer.
The COURT: Have you anything to offer, Sr. Feria?
Sr. FERIA: No, sir.
The COURT: The case is closed.

I certify that the above is a correct transcript of short-
54 hand notes of testimony taken by me of the proceedings in the above entitled case in the Court of First Instance for the City of Manila, on the 5th day of October, 1910.

(Signed) WM. M. BARRINGTON,
Official Stenographer.

Thereafter and on the 15th day of October, the Court of First Instance of the City of Manila, Hon. A. S. Crossfield, presiding in Part II, rendered the following decision in the foregoing case:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part II.

Case No. 8110.

CHIENG AH SUI
vs.
INSULAR COLLECTOR OF CUSTOMS.

Decision.

This case is before the Court for hearing the writ of habeas corpus
55 issued upon the petition of Chieng Ah Sui, alleged to be the legitimate minor son of Chieng Ah Soon, a Chinese merchant doing business in the City of Manila, and further alleging that the petitioner arrived in the Philippine Islands and applied for admission as the minor son of a resident merchant; that he was brought before a board of special inquiry which heard a large number of credible witnesses, who testified that the petitioner was the

legitimate minor son of a resident merchant, but that notwithstanding the testimony the board arbitrarily and in abuse of its authority decided that he was not the son of Chieng Ah Soon, a resident merchant, and was not entitled to enter the Philippine Islands; that the said board of inquiry was not duly constituted and had no jurisdiction to exclude the petitioner from the Philippine Islands, and that the petitioner attempted to bring additional proof before the board of inquiry as to his parentage, and that he was refused the opportunity.

The Insular Collector of Customs made return to the writ, alleging that the petitioner had been examined by a board of special inquiry, duly authorized, and that after making the investigation the board decided that the petitioner was not entitled to enter the Philippine Islands; that an appeal was taken to the Insular Collector of Customs and that a new hearing was asked for and granted, and that the board after the second hearing rendered the same decision, and that thereafter still a new hearing was asked for and granted, and the board continued its former decision; that an appeal was taken to the Insular Collector of Customs, who confirmed the decision of the board of inquiry, and that the petitioner was ordered
56 deported, and was held for the purpose of deportation.

Mr. Hartford Beaumont appeared in behalf of the petitioner; Sr. F. R. Feria for the Insular Collector of Customs.

The petitioner submitted the record made in the investigation before the board of inquiry, as well as his petition to be allowed to have a further hearing before the board of special inquiry, and the denial of such hearing by the Insular Collector of Customs, and a part of the additional evidence asked to be presented to the board was presented in this court.

The question as to the proper constitution of the board of special inquiry has been before determined by this court in favor of its proper constitution.

The claim of the petitioner that the board of inquiry did not have power to reject or deny landing to the petitioner is without force, for the reason that if the board of inquiry is not properly constituted and may not determine the power to land, the petitioner would be entirely without means for determining his right to enter, under the laws governing the matter.

Practically the only question left is, whether the board of inquiry acted in abuse of its discretion, or in abuse of the authority which it has as a board of inquiry, and whether the Insular Collector of Customs in affirming the decision of the board of inquiry acted in abuse of his authority.

Additional evidence was offered in this case on the part of the petitioner from which it might appear that this petitioner was excluded merely because of the fact that his father, who is a resident merchant, upon leaving the Philippine Islands, was at first
57 refused a merchant's certificate under which he could return, but that afterwards in consideration of the performance by him of some special work in China the usual certificate was issued

to him, with the understanding that he was not to bring back with him any of his children.

However, excluding all the evidence offered in this court, and taking only that which was presented to the board of special inquiry, the evidence presented before the board of special inquiry was unanimously and unquestionably to the effect, that this petitioner is the son of Chieng Ah Soon; that Chieng Ah Soon is a Chinese merchant established in business at Nos. 79 and 81 Calle San Jacinto, city of Manila: and that several witnesses testified as to their knowledge of said merchant and of his children, giving their names, and identifying the petitioner as well as his brother as sons of said merchant, they both having come to the Philippine Islands at the same time with their father, and there was not any evidence received to dispute or deny this testimony.

The only thing which appears in the record is a note at the foot of page two of the original proceedings had, which states that when Ah Soon left the Philippine Islands for China he was examined with regard to his family, and that he stated he had three sons and one daughter, naming them as Ah Luy, Ah Wing, Ah Fua, and Ah Pec, and that consequently Ah Sui, the petitioner, was not named by him.

This appears in the record by way of a note which refers to an inspector's slip which is not in evidence, but which may be taken upon its face to be true, but cannot by any reasonable possi-
58 bility be taken as sufficient to overthrow the positive testimony of the witnesses who were offered. In the making of the inspector's slip it would be very easy to misunderstand the giving of the name "Ah Sui" and to have written or to have afterwards placed upon the slip the name as "Ah Fua." The speaking of Chinese names is done with an intonation which unless extreme care is exercised misunderstanding will result.

Boards of inquiry as authorized by law are given judicial powers, and extraordinary, and in the exercise of these judicial powers procedure and consideration should be conducted in a reasonably judicial manner, and the results should be reasonably judicially determined.

In a dissenting opinion one of the members of the board of inquiry dissents from the allowing to land of the son Ah Luy on the ground that his father had never actually established his status as a merchant, because his certificate had been granted for special purposes never made known to the Immigration Division, which nowhere appears in the evidence, and which discloses an excess of authority on the part of the board of special inquiry.

In the exercise of its powers the board of special inquiry should act with that discretion which men should have who are appointed to exercise such judicial powers, and it clearly appears to me that there was an abuse of the discretion conferred upon the board in disregarding the evidence which was presented and determining results upon the incidental statement upon an inspector's slip which is not in evidence.

The authority conferred upon the board to inquire into
59 the right of the petitioner to land in the Philippine Islands was abused, when it denied without reason credibility to the evidence presented by him.

The Insular Collector of Customs in refusing further hearing to the petitioner acted fully within his authority, because it appears that there had been ample opportunity given before, but it appears to me that the Insular Collector of Customs acted in excess of his authority when he confirmed the decision of the board of inquiry upon appeal upon the evidence which had been presented to the board, because that evidence did not justify that finding.

The conclusions are, that the petitioner, Chieng Ah Sui, is entitled to the right to be released from custody, and allowed to land in the Philippine Islands.

Let judgment be entered accordingly.

Manila, P. I., October 15th, 1910.

(Signed) A. S. CROSSFIELD, *Judge.*

Thereafter and on the 21st of October, 1910, notice of the foregoing decision was sent to the parties and copy of the same was sent to the Collector of Customs.

60 Thereafter and on the 22nd day of October, 1910, the Attorney-General filed the following notice of appeal:

(Title of Court and Cause Omitted.)

"The undersigned, in representation of the Insular Collector of Customs, appears before the Court and manifests his intention of appealing from the decision of the Court in the above-entitled case.

"Manila, P. I., October 22, 1910.

(Signed) "IGNACIO VILLAMOR,
"Attorney-General."

Thereafter and on November 21, 1910, the Clerk of the Court of First Instance of the City of Manila made the following certificate:

(Title of Court and Cause Omitted.)

"I, José McMicking, Clerk of the Court of First Instance of the City of Manila, P. I.,

"Certify: That the foregoing 49 useful sheets, with this, constitute the proceedings in the above-entitled cause. And for the effects of the last paragraph of Art. 4 of Act No. 654 of the Philippine Commission, I extend the present, which I sign and seal with the official seal of this Court in Manila on this 21st of November, 1910.

"[SEAL.]" (Signed) "J. McMICKING, *Clerk.*"

61 Thereafter and on November 21, 1910, the Clerk of the Court of First Instance of the City of Manila forwarded the proceedings had in this case to the Clerk of the Supreme Court of

the Philippine Islands with the following letter, omitting the heading:

"I have the honor to forward to your Court civil cause No. 8110, prosecuted by Chieng Ah Sui against the Collector of Customs, consisting of 49 useful sheets, by virtue of the exception made by said defendant against the decision handed down in that cause, for its due resolution.

Respectfully,

(Signed) J. McMICKING, *Clerk.*"

The record of said cause was duly received by the Clerk of the Supreme Court on the same day, November 21, 1910.

Thereafter and on November 22, 1910, the Attorney-General was duly notified of the receipt of the record of said cause in the Supreme Court on appeal against the judgment of the Court of First Instance of Manila.

Thereafter and on December 28, 1910, counsel for the petitioner and appellee filed a motion requesting that the petitioner be placed at liberty on the filing of necessary bond, the Attorney-General stating at the foot of the said motion that he was in conformity therewith.

Thereafter and on January 5, 1911, the Supreme Court by resolution requested the Attorney-General to recommend the amount of the bond that would be required, and on January 17,
62 1911, bond in the sum of $500.00 was duly approved by the Hon. Sherman Moreland, Associate Justice of the Supreme Court of the Philippine Islands, the Attorney-General also having approved the same.

Thereafter and on January 17, 1911, the Clerk of the Supreme Court notified the Insular Collector of Customs by letter of the filing of the bond, ordering him to place the petitioner at liberty unless detained for some other reason.

Thereafter and on February 14, 1911, the Acting Attorney-General filed brief on behalf of the Respondent and Appellant.

Thereafter and on September 15, 1911, counsel for the petitioner and appellee filed his brief.

Thereafter and on February 15, 1912, counsel for the petitioner and appellee filed a motion requesting that the cause be placed on the calendar for its prompt decision on account of its being of great importance, involving the same legal questions as those in a number of other cases which are pending awaiting its resolution.

Thereafter and by resolution of the Supreme Court of February 16, 1912, the case was put down for hearing on the 26th of February, 1912.

Thereafter and on March 26, 1912, the Supreme Court of the Philippine Islands rendered decision as follows:

63 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6579.

CHIENG AH SUI, Plaintiff and Appellee,
vs.
THE INSULAR COLLECTOR OF CUSTOMS, Defendant and Appellant.

Submitted: Feb. 26, 1912.
Decision promulgated March 26, 1912.

JOHNSON, *J.:*

The present action was commenced in the Court of First Instance of the City of Manila by filing a petition for a writ of habeas corpus.

After hearing the evidence, the Honorable A. S. Crossfield, Judge, granted the writ as prayed for, from which order the Collector of Customs appealed to this court.

It appears from the record that some time prior to the commencement of the action in the lower court, a Chinaman by the name of Chieng Ah Soon, who claimed to be a merchant doing business at Nos. 79 and 81 Calle San Jacinto, in the City
64 of Manila, returned from China bringing with him two boys, named respectively Chieng Ah Lui, twenty years of age, and Chieng Ah Sui, sixteen years of age. These boys, Chieng Ah Lui and Chieng Ah Sui, were first denied admission into the Philippine Islands. An investigation was held by the Board of Special Inquiry, which Board, after hearing all of the witnesses which the father, Ah Soon, desired to present, found that the said Ah Lui was the son of Ah Soon and therefore admitted him. The Board, from the evidence, found that Ah Sui was not the son of Ah Soon, and refused him admission. From that decision Ah Soon appealed to the Insular Collector of Customs, the Honorable H. B. McCoy, who, upon due investigation, found that Ah Sui was not the person that he represented himself to be and was not the son of Ah Soon, and therefore confirmed the decision of the Board of Special Inquiry.

Upon petition a second hearing was accorded by the Board of Special Inquiry, and again it was decided that Ah Sui was not the son of Ah Soon, and therefore not entitled to enter the Philippine Islands. Again an appeal was made to the Insular Collector of Customs, who again confirmed the finding of the Board of Special Inquiry.

A third hearing was asked for and granted by the Collector of Customs. Upon the third hearing the Board of Special Inquiry, after hearing all of the evidence which Ah Soon offered,
65 again found that Ah Sui was not entitled to enter the Philippine Islands. A third appeal was taken to the Insular

Collector of Customs, and again the finding of the Board of Special Inquiry was affirmed.

A fourth hearing was asked for on the part of Ah Soon, which was denied by the Insular Collector of Customs in the following language:

"In reply to yours dated the 14th inst. (September, 1910) requesting a rehearing in the case of Chieng Ah Sui, I have to inform you that in this case the records show that three separate and distinct hearings have been given, at each of which testimony was introduced on behalf of the applicant, and the record of each of these hearings discloses the fact that all of the witnesses presented were heard. It would seem that this applicant has had every reasonable and necessary opportunity to present any testimony which might have tended to prove his right to enter the Philippine Islands. These hearings were held on July 19th and 23rd, and August 10th, while the decision of the Insular Collector of Customs upon the appeal therefrom was not rendered until September 3rd, one and a half months after the first hearing. It would appear that even reasonable diligence would have secured the attendance of any necessary or competent witnesses within the time stated prior to the decision of this case on September 3rd.

"For the foregoing reasons the application for rehearing is denied.

(Signed) "H. B. McCOY,
"Insular Collector of Customs."

From the third decision of Colonel McCoy, as Insular Collector of Customs, an appeal was taken to the Court of First Instance, and there some proof was taken in addition to that submitted before the Board of Special Inquiry. Upon the record in the present case, the right of the Court of First Instance to take evidence in
66 addition to that presented to the Board of Special Inquiry is very questionable indeed. In the present case, however, the Judge of the Court of First Instance declared that the testimony taken before him in no way influenced his judgment in declaring that the applicant was entitled to a writ of habeas corpus.

Several Chinese witnesses before the Board of Special Inquiry claimed that they knew Ah Soon and his family in China; that they lived in the same town and swore that he had several children, among whom was the boy Ah Sui. It appears also from the record that some months prior to the time when Ah Soon returned to the Philippine Islands with the two boys Chieng Ah Lui and Chieng Ah Sui, and upon leaving the Philippine Islands for China, he made a declaration which was placed on file in the office of the Insular Collector of Customs, in which he gave the names of the members of his family. The name of Ah Sui did not appear then as a member of his family. Ah Sui was sixteen years of age. If he were a member of the family when Ah Soon returned to the Philippine Islands, he must have been a member of the family a few months theretofore. Children do not reach the age of sixteen years in a few months. Some objection was made to the right of the Board of Special Inquiry to take notice of said declaration presented by

Ah Soon in relation to the members of his family. The declaration constituted a part of the records of the office of the Insular
67 Collector of Customs. The Board of Special Inquiry is a Board connected with that branch of the Government and it had a perfect right to take judicial notice of relevant facts found in their records.

We are of the opinion that the Insular Collector of Customs in no way abused the discretion imposed upon him in reaching the conclusion that Chieng Ah Sui as not the son of Ah Soon and was, therefore, not entitled to enter the Philippine Islands.

Upon all of the facts contained in the record, we are of the opinion that the order of the lower court admitting into the Philippine Islands the Chinese boy, Chieng Ah Sui, should be revoked, and that an order should issue that the said Chieng Ah Sui should be returned to the custody of the Insular Collector of Customs, in order that he may be deported in accordance with the law.

After the expiration of 20 days from the date hereof, let judgment be entered in accordance herewith, and 10 days thereafter let the record be remanded to the court below for execution.

It is so ordered.

(Signed) E. FINLEY JOHNSON.

We conform:

(Signed) C. S. ARELLANO.
" FLORENTINO TORRES.
" VICTORINO MAPA.
" A. C. CARSON.
" GRANT T. TRENT.

Filed in the Clerk's Office, March 26, 1912.

(Sgd.) J. E. BLANCO, *Clerk.*

68 Thereafter and on March 27, 1912, the parties in interest were duly notified of the foregoing decision of the Supreme Court.

Thereafter and on April 8, 1912, counsel for the petitioner and appellee filed the following motion for a new hearing:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6579.

CHIENG AH SIU, Petitioner and Appellee,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Oppositor and Appellant.

Motion for a New Trial.

Now comes the petitioner and appellee in the above-entitled cause and moves for a new trial on the following grounds:

1. That the decision of this Honorable Court rendered on March 26, 1912, contains an error of law in that the jurisdiction of the Board of Special Inquiry to dispose of all cases under the Chinese Exclusion Act, a question very vital and important in this case, is not determined, and if impliedly determined it was incor-
69 rectly done.

The present action is a leading one wherein the principal question at issue refers to the jurisdiction of the Board of Special Inquiry. It is taken for granted that both parties are desirous of having this question settled. There are pending in this court many cases involving this question which are awaiting the final disposition of this appeal. Some of them are pending by order of the court itself, others by agreement of counsel, but the pendency of all of them is due to the fact that they are awaiting the resolution of the question of the jurisdiction of the Board in these proceedings.

So long as this question remains undetermined there will accumulate in the docket both of this Court and that of the court below many similar cases.

The question of the jurisdiction of the Board is a vital and important one in this case. It was raised by the writ in the court below and it was strongly insisted upon at each step of the proceedings. If this question be decided in favor of the petitioner the proceedings of the court below would be null and void and the decision rendered by this court would be revoked. That the question is a well-grounded one can be inferred from the fact that the court below, in criminal cases, has from time to time decided that the Board has no jurisdiction over Chinese cases, and that the oaths falsely given before said tribunal in a Chinese case do not constitute "perjury" because they are not given before any competent
70 tribunal. See the brief filed in regard to this question of jurisdiction in the case of The United States versus Somera.

2. That the said decision contains an error of law in that the Court overlooked indisputable evidence of record tending to show that the administrative decision was arbitrary and that no declarations however true and many would land a man whom the cus-

toms officials should happen to determine not to allow to land. If this is true—and this is nowhere discussed—then the petitioner only had a mock trial. All the proceedings had before the Board were a farce, the case was prejudiced, and the petitioner had no just trial or anything of that sort.

3. That the said decision contains an error of law in that the Court assumes that the court below erred in taking other declarations besides those adduced before the Board of Special Inquiry in spite of the fact that such declarations were given with the view of showing, and in fact tended to show, abuse of discretion, and also that the petitioner had the form but not the substance of a trial before said Board.

4. That the said decision contains an error of law in that the Court held that the father of the petitioner had not mentioned the name of the petitioner before his departure when in fact the only question in controversy was whether he mentioned the name as Ah Fua or Ah Siu.

5. That the said decision contains an error of law in that the Court held that an entry made but not signed by an unknown person in reference to the family matters of the father of the
71 petitioner (not the petitioner), entry which has not been made in conformity with the law or rules, was a part of the official records of the Board of Special Inquiry, of which it is bound to take "judicial notice" to the prejudice of the petitioner.

6. That the said decision contains an error of law in that it is contrary to the proof and to all the evidence such as were taken and weighed by the court below.

7. That the said decision contains an error of law in that it assumes, against the allegations contained in the petition and against the uncontroverted evidence, that the Board was properly constituted (assuming that it had jurisdiction). From the record it appears that one of the members of the Board was a stenographer and not an immigration inspector, and under the law (except in certain exceptional cases in which the present one has not been shown to be included nor is claimed to be included) the Boards of Special Inquiry should be composed wholly of inspectors. A mere employee, stenographer, salaried woman, or messenger, cannot legally take part in a Board of Special Inquiry to determine the right of a foreigner to enter this country.

In conclusion, it can be said that the controversy, especially in regard to the disputed jurisdiction of the Board of Special Inquiry, is a very important one. It involves the question of the interpretation of the Acts of Congress and of the Treaties of the United States. Unless the present legislature has the power to
72 amend an Act of Congress, unless the local legislature should successfully amend such Act of Congress, unless Customs Administrative Circular No. 186 which in itself amends an Act of Congress, be valid, defensible and legal, the petitioner will have a right to a decision. It is respectfully submitted that such questions are very grave to be overlooked and that a new trial wherein

these questions may be fully discussed should be allowed and the the same decided after discussion.

Respectfully submitted,

(Signed) HARTFORD BEAUMONT,
Attorney for Petitioner and Appellee.

Manila, April 1, 1912.

Received copy:

(S'g'd) F. R. FERIA,
Attorney for Opposítor and Appellant.

Thereafter and by resolution of July 31, 1912, the Supreme Court denied the foregoing motion for a new trial and ordered that final judgment be rendered.

Thereafter and on August 2, 1912, final judgment was rendered as follows:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

August 2, 1912. File No. 6579.

CHIENG AH SUI, Plaintiff and Appellee,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Defendant and Appellant.

Judgment.

73 The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 26th day of March, A. D. nineteen hundred and twelve.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 15th day of October, nineteen hundred and ten, and from which the above-entitled appeal was taken, be, and the same is hereby revoked and it is ordered that the said Chieng Ah Sui be returned to the custody of the Insular Collector of Customs in order that he may be deported, in conformity with the law.

It is further ordered that * * * recover from * * * the sum of * * *, as costs.

[SEAL.] (Signed) V. ALBERT.
Clerk of the Supreme Court
of the Philippine Islands.

Thereafter and on August 6, 1912, counsel for the petitioner Chieng Ah Sui duly excepted to the order of the Supreme Court denying his motion for a new trial in this case, requesting that note of the same be made.

Thereafter and by resolution of August 7, 1912, the Supreme Court duly admitted said exception and it was ordered noted on the record.

74 Thereafter and on August 17, 1912, counsel for the petitioner Chieng Ah Sui filed the following appeal:

(Title of Court and Cause Omitted.)

"Appeal.

"The above named plaintiff conceiving himself aggrieved by the decree made and entered on the 31st day of July, 1912, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated may be sent to the Supreme Court of the United States.

"Manila, P. I., August 17, 1912.

(Signed) "HARTFORD BEAUMONT,
"Attorney for Plaintiff,
"143 *Escolta, Manila."*

Note by Clerk of Supreme Court.

The assignment of errors above mentioned, through some oversight of counsel for petitioner, was not filed with the petition for appeal, but was filed later and on the 29th day of October, 1912.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of Supreme Court, P. I.

75 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 6579.

CHIENG AH SUI, Plaintiff,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Defendant.

Assignment of Errors.

1. That the Court erred in holding that a Board of Special Inquiry organized and acting wholly under authority of the Act of February 20, 1907, had jurisdiction to exclude from the Philippine Islands an alien immigrant on grounds peculiar to the Chinese

Exclusion Laws (Act of April 29, 1902, as amended by Act of April 29, 1904, and Laws thereby continued and extended).

2. The Court erred in holding that the Board of Special Inquiry organized and acting wholly under authority of the Act of February 20, 1907, had jurisdiction to exclude from the Philippine Islands an alien immigrant who was not found to belong, and did not belong, to any one of the classes enumerated in Sec. 2 of the Act of February 20, 1907, nor to any other class excluded by the terms of that law.

2. The Court erred in holding that the Board of Special Inquiry Collector of Customs (Circular 186) could amend an Act of
76 Congress and could legally divest the tribunal provided by Congress for Chinese immigration cases of its jurisdiction and grant jurisdiction to hear and determine controversies in respect to the rights of Chinese aliens to enter the United States, to another and a different tribunal.

4. The Court erred in holding that from the decision of the Insular Collector of Customs "an appeal was taken to the Court of First Instance."

5. The Court erred in holding that Chieng Ah Soon the father of the petitioner had some months before the arrival of the petitioner made a declaration which was placed on file in the office of the Insular Collector of Customs in which he gave the name of the members of his family.

6. The Court erred in holding that Chieng Ah Soon at the time he departed did not mention Chieng Ah Sui as a member of his family.

7. The Court erred in holding that certain informal notes made by an unknown inspector, not by virtue of any law or regulation whatsoever, became part of the official records of the Collector of Customs and that a Board of Special Inquiry had a right to take judicial notice of such notes, and to take the statements therein contained as true.

8. The Court erred in reversing the decision of the Court of First Instance.

9. The Court erred in refusing a rehearing to the petitioner.

10. The Court erred in remanding the petitioner to the
77 custody of the Collector of Customs for deportation from the Philippine Islands.

(Signed) HARTFORD BEAUMONT,
Attorney for the Petitioner,
143 *Escolta, Manila*

NOTE.—The foregoing assignment of errors, although not filed at the same time as the petition for appeal as heretofore mentioned, has been inserted at this place for the purpose of keeping the record in regular order, the Supreme Court by resolution of October 31, 1912, having admitted said assignment of errors to form a part of the record.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court, P. I.

78 Thereafter and on August 22, 1912, the Supreme Court passed a resolution denying the petition for appeal in this case.

Thereafter and on August 27, 1912, counsel for petitioner filed the following motion:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 6579.

CHIENG AH SUI
vs.
INSULAR COLLECTOR OF CUSTOMS.

Motion.

Now comes Chieng Ah Sui, plaintiff in this case, by Hartford Beaumont, his Attorney, and states that he intends to file suit in Mandamus in the Supreme Court of the United States, praying that the Supreme Court of the Philippine Islands be ordered to allow the appeal herein; and the said plaintiff moves the Court to fix the amount of the supersedeas bond to stay the execution of the judgment herein until the determination of said suit in Mandamus.

Manila, August 26, 1912.

(Signed) HARTFORD BEAUMONT,
Attorney for Plaintiff,
143 *Escolta.*

79 Thereafter and on September 6, 1912, the Supreme Court passed the following resolution:

"There having been submitted to the Court the petition presented by attorney Hartford Beaumont, wherein he states that he intends to file a writ of mandamus in the Supreme Court of the United States in order to compel this court to allow the appeal taken against the judgment of this Court rendered in case No. 6579, Chieng Ah Sui vs. The Insular Collector of Customs, wherefore the petitioner moves that this Court should fix the amount of the bond that he should file for the suspension of the judgment in said cause, the Court resolved that the same be referred to the Attorney-General for opinion whether bond should be allowed or not, and if it should be, to fix the amount thereof."

Thereafter and on September 23, 1912, the Solicitor-General filed the following opinion in regard to the matter of bond:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 6579.

CHIENG AH SUI, Plaintiff,
vs.
INSULAR COLLECTOR OF CUSTOMS, Defendant.

80 Now comes the defendant, by the Solicitor-General, and in compliance with the order of the court dated the 7th instant upon the plaintiff's application to the court to fix the amount of supersedeas bond to stay the execution directed herein, pending the determination of a suit by plaintiff for mandamus against this court to allow an appeal in this cause, respectfully states:

1. That it is provided in section 5 of the Act of Congress of May 5, 1892 (27 Stat., p. 25) as follows:

That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay.

It will be noted that the provisions of the foregoing section relate to the application to the court in the first instance for writ of habeas corpus. Said section would therefore appear not to be applicable when an appeal is taken to a higher court. The plaintiff does not propose in his motion to appeal to a higher court, but to apply to the Supreme Court of the United States for a writ of mandamus to compel this court to allow an appeal. Such a contingency was never anticipated by the law-makers, and there is no provision of law covering such cases.

2. In section 2 of the Act of Congress of November 3, 1893, entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May 5, 1892," it is provided as follows:

81 Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this county as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal, and shall not be admitted to bail.

In the present case an application for a writ of habeas corpus wa made by Chieng Ah Sui as the legitimate minor son of Chieng Al Soon, a Chinese merchant. It would appear that the rule expressl provided by law for the Chinese merchant would be equally appli cable to the case of his alleged son. But there appears to be som doubt or ambiguity about the meaning of the last paragraph abov quoted from the Act of November 3, 1893. In the case of Unite States vs. Go-Siaco, 12 Phil., 490, 492, this court said:

The location of this last clause in the section might make it doubt ful as to whether it referred to the order of deportation mentione in Section 1 of the Act or to the order refusing permission to land mentioned in the clause immediately preceding it, but we think a fair construction of the whole Act indicates that it refers to the order of deportation mentioned in the first section, and as such i would apply to a case of deportation.

The question, however, still remains, whether the paragraph wa intended to apply to the order as soon as it was made by the Com missioner or by the district court, if proceedings were first had before the latter, or whether it was intended to apply only after the
82 first order, when made by the Commissioner or the court had been affirmed on appeal, if an appeal was taken. That an appeal lies in cases of deportation, even to the Supreme Court o the United States, is well settled. (United States, petitioner, 194 U. S., 194; Liu Hop Fong vs. United States, 209 U. S., 453.) We see nothing in the Act which necessarily requires us to say that bail can not be allowed pending such appeal. The phrase "and he shall execute the same with all convenient dispatch," on the contrary, in dicates that it applies only when the order is in such condition that it can be executed at once, which would not be the case where an appeal had been taken and a supersedeas bond given.

As above noted, the plaintiff does not propose in his motion to appeal to a higher court, but to apply to the Supreme Court of the United States for writ of mandamus to compel this court to allow an appeal.

In the course of its decision in the Go-Siaco case, supra, this court said:

If bail is refused in this case, we do not think it can be said that the defendant has had a full opportunity to assert his rights. He was arrested, as has been said, on the 24th of July, 1908. He has been in confinement ever since that time and if bail is refused will have to remain a prisoner until the decision of his case in this court. If our decision be adverse to him, he will have the right to remove the case to the Supreme Court of the United States and will have to remain in jail during the pendency of that appeal. Rather than endure confinement for that length of time, he might well say that he would abandon his appeal and surrender the rights which the law has given to him.

Upon principle, we see no reason why bail should not be allowed in this class of cases. As is said by the Supreme Court, the defendant has committed no crime. * * * There is no reason to think that his being at large will be any menace to the people in the lo-

cality where he resides, nor is there any reason to believe that his attendance at court to abide the judgment which may be entered against him can not be secured by the giving of bail as in ordinary cases. To refuse him bail is to treat him as a person is treated who has committed the most serious crime known to the law, and while we do not intend to say that this is a criminal proceeding, we do say that some of the machinery used for making the investi-
83 gation required by Act No. 702 is the machinery of the criminal law, and to it are applicable those provisions of General Orders, No. 58, relating to bail.

The motion is granted, and upon being notified of this decision, the Attorney General will indicate the amount of the bond which in his opinion the defendant should furnish, and upon the filing and approval of the bond in such amount as may be fixed by the court, after hearing the Attorney-General, an order will be made releasing the defendant. So ordered.

In this case, to refuse to allow the plaintiff to give supersedeas bond would be equivalent to requiring him to remain a prisoner in the hands of the customs authorities until the question of his right to appeal is determined by the Supreme Court of the United States, and I am of opinion that he should be afforded an opportunity to test the question of his right to an appeal without thereby becoming a prisoner pending the determination of said right.

It is therefore recommended that the court grant the plaintiff's motion filed in this case on August 26, 1912, and that the amount of the bond be fixed at the sum of two thousand pesos (P2,000.00).

Manila, September 21, 1912.

Respectfully submitted,

(Signed) GEO. R. HARVEY,
Solicitor-General.

Thereafter and on September 25, 1912, the court by resolution granted the petition of counsel for Chieng Ah Sui, fixing the amount of the supersedeas bond to be filed in the sum of Two Thousand Pesos (P2,000.00).

84 Thereafter and on October 19, 1912, supersedeas bond was filed as follows:

(Title of Court and Cause Omitted.)

Supersedeas Bond.

Know all persons by these Presents, that we, Chieng Ah Soon of Manila, and Ong Po Yuk of Manila, and Chin Ying of Manila, as sureties are held and firmly bound unto the said Insular Collector of Customs, in the full and just sum of Two Thousand Pesos (P2,000.00) Philippines Currency, to be paid to the said Insular Collector of Customs, his attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs,

executors and administrators, jointly and severally by these presents.

Signed by us at Manila this 11 day of October, 1912.

Whereas, lately in the Supreme Court of the Philippine Islands on the 31st day of July, 1912, in a suit depending in said Court between Chieng Ah Sui, plaintiff and the said Insular Collector of Customs, defendant, a decree was rendered against the said Chieng Ah Sui, and the said Supreme Court of the Philippine Islands has refused to allow an appeal to the Supreme Court of the United States, and the said Chieng Ah Sui has stated that he intends to file a suit in Mandamus in the Supreme Court of the United States praying that the said Supreme Court of the Philippine Islands be ordered to allow said appeal; and

Whereas, the above named Chieng Ah Sui is in the custody
85 of the said Insular Collector of Customs;

Now, the condition of the above obligation is such that if the said Chieng Ah Sui shall prosecute said suit in Mandamus to effect, and answer all damages and costs if he fail to prevail in said suit, and if the said Chieng Ah Sui shall personally appear at such time and places as he may be lawfully required, and do what may then and there by the Court be enjoined upon him to do, and not to depart the Court without cause, then this recognizance shall be void; otherwise to remain in full force and effect.

(Sgd.) AH SOON,
Principal, Calle Lacoste #631.
ONG PO YUK,
Surety, Plaza Santa Cruz #17.
CHIN YING,
Surety, Calle Sacristia #732. 4.

Signed in the presence of—
CHAS. E. TENNEY.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila:

In the City of Manila, this 11 day of October, 1912, A. D. personally appeared before me Chieng Ah Soon, with Certificate of Registration Letter No. F1539055 issued by the Collector of Internal Revenue, in the Subic, Zambales, P. I. on the 26th day of March, 1912, Mr. Ong Po Yuk with Certificate of Registration Letter No. F35024 issued by the Collector of Internal Revenue in Ma-
86 nila, P. I. on the 25th day of March, 1912, Mr. Chin Ying with Certificate of Registration Letter No. F3520 issued by the Collector of Internal Revenue in Manila, P. I. on the 8 day of January, 1912, and executed the foregoing document, which the (should be they) conformed and ratified, declaring the same to be their free and voluntary act and deed.

(Sgd.) V. DIMAGUILA,
[Notarial Seal.] *Notary Public.*

My commission expires December 31, 1912.
Entry No. 297, page 96.

MANILA,
Philippine Islands, ss:

We, Chieng Ah Soon of Manila, P. I., and Ong Po Yuk of Manila, P. I., and Chin Ying of Manila, P. I., having been duly sworn, state and depose that we are residents and householders in the Philippine Islands, and that we are actually worth the amount specified in the foregoing undertaking, to-wit two thousand pesos (P2,000.00) Philippine Currency, over and above all just debts and obligations and property exempt from execution.

(Signed) AH SOON.
ONG PO YUK.
CHIN YING.

Subscribed and sworn to before me this 11 day of October, 1912, at Manila, Philippine Islands.

(Sgd.) V. DIMAGUILA,
[NOTARIAL SEAL.] *Notary Public.*

My commission expires December 31, 1912.
Entry No. 297, page 96.

Approved:
(Signed) IGNACIO VILLAMOR,
Attorney-General.

87 Thereafter and on October 19, 1912, the Supreme Court passed the following resolution:

"There having been submitted the bond filed by the appellant in cause No. 6579, Chieng Ah Sui versus The Insular Collector of Customs, for the suspension of the judgment, the court resolved: In view of the qualification and approval of the Attorney-General in regard to the sufficiency of the sureties, said bond is approved, and by the present there is ordered the suspension of the execution of the judgment for a period of ninety (90) days from this date in order that the petitioner may interpose during that period before the Supreme Court of the United States the appeal that he believes proper, and if he should fail to do so within said term there will be declared null and of no value the bond referred to.

88 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 87 typewritten pages contain a true and correct translation and transcript of the proceedings had before the Board of Special Inquiry of the Bureau of Customs in connection with the request of Chieng Ah Sui, a Chinaman, to be allowed to enter into the Philippine Islands; of the proceedings had in the Court of First Instance of the City of Manila by virtue of the

writ of habeas corpus applied for by counsel for said Chieng Ah Sui and issued by said court; and of the proceedings had in this Supreme Court of the Philippine Islands on appeal by the respondent, The Insular Collector of Customs; the case bearing No. C. B. R. No. 1044 of the Bureau of Customs, No. 8110 on the docket of the Court of First Instance of the City of Manila, and No. 9579 on the docket of this Supreme Court, being entitled in this Court Chieng Ah Sui, Plaintiff and Appellee, vs. The Insular Collector of Customs, Defendant and Appellant. Chieng Ah Sui having been denied appeal to the Supreme Court of the United States from the judgment of this Supreme Court, this record is prepared by request of his counsel for use in connection with writ of mandamus which he intends to present to the Supreme Court of the United States.

In witness whereof, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands on this 15th
89 day of November, 1912.

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

[Seal Corte Suprema, Islas Filipinas.]

Clerk's office, Supreme Court, Philippine Islands. Received 9.58 a. m. Feb. 28, 1913.

90 In the Supreme Court of the United States.

CHIENG AH SUI, Petitioner,
vs.
INSULAR COLLECTOR OF CUSTOMS, Respondent.

Petition for the Allowance of an Appeal.

Comes now Chieng Ah Sui, petitioner herein, and respectfully prays that an appeal be allowed in this case under Rule 36 of this court. The grounds on which the petition is based are as follows:

Your petitioner states that he is a minor son of a Chinese merchant named Chieng Ah Spon, domiciled in the City of Manila, Philippine Islands, and that, as appears by the certified copy of the record in this case which is submitted herewith, he sought admission to the Philippine Islands at the Port of Manila on July 19, 1910, as said minor son of said merchant under the Treaty of 1880 between the United States and China and the Acts of Congress regulating the admission of Chinese into the United States made applicable to the Philippine Islands by the Act of April 29, 1902. On various occasions between July 19 and August 10, 1910, he was examined as to his right to enter by a Board of Special Inquiry appointed by the Insular Collector of Customs, and finally denied admission by that Board on the ground that the relationship claimed did not exist. He appealed to the Insular Collector who, on September 3, 1910, affirmed the decision denying him admission. On September

23, 1910, he applied for a writ of habeas corpus in the Court of First Instance of the City of Manila directed against the Insular Collector of Customs, alleging as one of the grounds for the issuance of the writ, the fact that there was absolutely no evidence to justify the finding of the Board of Special Inquiry, and that in excluding him it acted in arbitrary disregard of the entire evidence submitted to show the existence of the relationship claimed. On October 5, 1910, the case was heard by the Court of First Instance who held that it clearly appeared that the Board of Special
91 Inquiry had abused its discretion in excluding your petitioner in that it unreasonably and without warrant refused to give weight to the evidence offered by him to prove the relationship claimed, and that the Collector of Customs acted in excess of his authority when he confirmed the action of the Board on appeal. The Insular Government appealed to the Supreme Court of the Islands which reversed the findings of the Court of First Instance of Manila and remanded the petitioner to custody on March 26, 1912. Your petitioner then moved for a new trial, the motion was denied, final judgment rendered and an exception made to the order denying the motion for a new trial. Thereafter on August 17, 1912 your petitioner prayed that an appeal might be allowed to this Court, which petition was denied by the Supreme Court of the Philippines on August 22, 1912. On August 26, counsel for petitioner announced his intention to file suit in mandamus in this Court praying that the Supreme Court of the Philippines be ordered to allow the appeal, and moved the Court to fix the amount of the supersedeas bond to stay the execution of the judgment until the determination of the mandamus proceedings. The question as to whether the bond should be allowed was referred to the Attorney General for his opinion. The recommendation by the Solicitor General that plaintiff's motion of August 26, to the effect that a bond be fixed at the sum of Two Thousand Pesos (One Thousand Dollars United States Currency) was adopted by the Court. On October 19, 1912 the bond was filed in that sum with sureties satisfactory to the Attorney General. Thereupon and on October 19, 1912, the Supreme Court of the Philippines approved the bond and ordered the suspension of the execution of the judgment "for a period of ninety days from this date in order that the petitioner may interpose during that period before the Supreme Court of the United States the appeal that he believes proper, and if he should fail to do so within said term there will be declared null and of no value the bond referred to."

92 In addition to the above statement of facts the petitioner submits the following points:

Point one. The jurisdiction of this court.

"The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby, in which the Constitution, or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thou-

sand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be review-, revised, reversed, modified, or affirmed by said Supreme Court on appeal or writ of error by the party aggieved, within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States." Sec. 248, Judicial Code, March 3, 1911. (Sec. 10, Act of July 1, 1902, 32 Stat. at L. 695, 5 Fed. Stat. Ann. p. 722.)

The statute or rather statutes of the United States involved are the Act of Congress of May 6, 1882, as amended by the Act of July 5, 1884, and the Act of Congress of September 13, 1888, as applied to the Philippine Islands by the Act of Congress of April 29, 1902. Further questions are raised as to whether or not, under the circumstances of the case, the detention of the petitioner for deportation would be the due process of law required by the Constitution of the United States and the Bill of Rights of the Philippine Islands into which the due process clause has been incorporated.

Point two. Petitioner's remedy is by appeal.

Fisher vs. Baker (203 U. S. 174; 51 Law Ed., 142); Nishimura Ekiu vs. United States (142 U. S. 651; 25 Law Ed., 1146); United States petitioner, (194 U. S. 194; 48 Law Ed., 931); Liu Hop Fong vs. United States (209 U. S. 453; 52 Law Ed., 888). In the case of United States vs. Go Siaco (12 Phil. Rep., 490, 492) quoted by the Solicitor General at length on pages 81 and 82 of the record in his opinion recommending that the supersedeas bond be allowed in this case, the right of a Chinese person arrested for deportation to appeal from the Supreme Court of the Philippines to this
93 Court is conceded without question by Mr. Justice Willard, in the following language: "If our decision be adverse to him he will have the right to remove the case to the Supreme Court of the United States and will have to remain in jail during the pendency of that appeal. Rather than endure confinement for that length of time, he might well say that he will abandon his appeal and surrender the rights which the law has given to him", and again on page 82 of the record the Solicitor General quotes Mr. Justice Willard: "That an appeal lies in deportation even to the Supreme Court of the United States is well settled.

Point three. The authority of a Justice of this Court to allow an appeal and to sign the citation is to be found in Rule 36 of this Court. (and see in re Classan, 140 U. S. 400; 45 Law Ed., 109).

Point four. There seems to be no justification whatever for the refusal on the part of the Supreme Court of the Philippines to allow the appeal. The only reason which is suggested by a reading of the record is that the Supreme Court was of the opinion that there had been no abuse of discretion and no arbitrary action on the part of the Board of Special Inquiry in excluding the petitioner. On the other hand the Judge of the Court of First Instance was equally convinced that there was no evidence whatsoever to justify such a

finding. In deciding this suestion in connection with the petition for the issuance of the writ of habeas corpus he was fully within his powers. He was not called upon, nor had he the right, to weigh evidence taken pro and contra before the Board of Special Inquiry; the question before him was whether or not there was any evidence to justify the excluding decision of that Board with a view to de'ermining whether or not in ordering the petitioner's exclusion it had acted arbitrarily. While this Court has constantly held, in connection with the question of the right of judicial review in deportation proceedings, that courts may always inquire into the
94 matter for the purpose of determining whether administrative officers have acted arbitrarily in excluding aliens or Chinese under the immigration or exclusion acts, it has not yet had occasion to pass upon a precise point as to whether or not the exclusion of an alien by an executive officer or board was arbitrary in that it involved a total disregard of evidence presented on the one side, where nothing which constituted legal evidence was offered on the other. Not so however, with the lower Federal Courts, which have frequently held that the courts may determine for themselves whether or not evidence offered on behalf of an applicant for admission is conclusive as a matter of law of that right, and consequently that the Departmental decision was arbitrary and unwarranted, (ex parte Long Lock, 173 Fed. 208, and to the same effect, United States vs. Williams, 189 Fed. 915; United States vs. Martin, 193 Fed. 795; United States vs. Williams, 175 Fed. 284; ex parte Peterson, 163 Fed., 536, obiter; United States vs. Wong Chung, 92 Fed. 141; ex parte Saraceno, 182 Fed. 955; and United States vs. Chin Len, 187 Fed. 544.) That the claim that the action of the Board of Special Inquiry was arbitrary and an abuse of its discretion is not baseless is shown first by the fact that the Court of First Instance held to that effect (see De la Rama vs. De la Rama, 201 U. S. 303, 311, 312; 50 Law Ed., 766, 768, 2nd column), and second, by the facts as presented and discussed in the judgment of the Court of First Instance on pages 57 and 58 of the record:

"However, excluding all the evidence offered in this court, and taking only that which was presented to the board of special inquiry, the evidence presented before the board of Special Inquiry was unanimously and unquestionably to the effect, that this petitioner is the son of Chieng Ah Soon; that Chieng Ah Soon is a Chinese merchant established in business at Nos. 79 and 81 Calle San Jacinto, city of Manila; and that several witnesses testified as to their knowledge of said merchant and of his children, giving their names, and identifying the petitioner as well as his brother as sons of said merchant, they both having come to the Philippine Islands at the same time with their father, and there was not any evidence received to dispute or deny this testimony.

95 "The only thing which appears in the record is a note at the foot of page two of the original proceedings had, which states that when Ah Soon left the Philippine Islands for China he was examined with regard to his family, and that he stated he had three sons and one daughter, naming them Ah Luy, Ah Wing, Ah

Fua, and Ah Pec, and that consequently Ah Sui, the petitioner, was not named by him.

"This appears in the record by way of a note which refers to an inspector's slip which is not in evidence, but which may be taken upon its face to be true, but cannot by any reasonable possibility be taken as sufficient to overthrow the positive testimony of the witnesses who were offered. In the making of the inspector's slip it would be very easy to misunderstand the giving of the name Ah Sui and to have written or to have placed afterwards upon the slip Ah Fua. The speaking of Chinese names is done with an intonation which unless extreme care is exercised misunderstanding will result.

"Boards of Inquiry as authorized by law are given judicial powers, and extraordinary, and in the exercise of these judicial powers procedure and consideration should be conducted in a reasonably judicial manner and the results should be reasonably judicially determined. * * * In the exercise of its powers the board of special inquiry should act with that discretion which men should have who are appointed to exercise such judicial powers, and it clearly appears to me that there was an abuse of the discretion conferred upon the board in disregarding the evidence which was presented and determining results upon the incidental statement upon an inspector's slip which is not in evidence." (Record, pages 57 and 50).

It may be said in closing that the condition of the bond is that your petitioner shall present a suit in mandamus. This is doubtless because of the belief of his attorney that this was the only way in which to submit the matter of the allowance of an appeal by the Supreme Court of the Philippines to this Court. The resolution of the Supreme Court of October 19, approving the bond permits the petitioner to "interpose * * * before the Supreme Court of the United States the appeal that he believes proper." For this reason the petitioner has availed himself of the provisions of Rule 36
96 of this Court in preference to the more formal and expensive steps incident to a mandamus proceeding.

Respectfully presented,

Respectfully presented,

SHUSTER & BOUVE,
Counsel for Petitioner.

F. D. McKENNEY,
Of Counsel.

Appeal allowed on giving bond for costs in the sum of five hundred dollars ($500.00).

January 16, 1913.

JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

97 Know all men by these presents, That we, Chieng Ah Sui, by Clement L. Bouvé, his attorney, as principal, and the American Surety Company of New York are held and firmly bound unto Henry B. McCoy, Insular Collector of Customs of the

Philippine Islands in the full and just sum of Five Hundred ($500.00) dollars, to be paid to the said Henry B. McCoy, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 16th day of January, in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately at a — *in* the Supreme Court of the Philippine Islands in a suit depending in said Court, between said Chieng Ah Sui, as appellee and said Henry B. McCoy, Insular Collector of Customs of the Philippine Islands, as appellant, a judgment was rendered against the said Chieng Ah Sui and the said Chieng Ah Sui having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Henry B. McCoy, Insular Collector of Customs citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within 120 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Chieng Ah Sui — this appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHIENG AH SUI, [SEAL.]
By CLEMENT L. BOUVE [SEAL.]
His Attorney. [SEAL.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By GEORGE M. BETTIS,
Resident Vice-President.
PAUL N. CHERRY,
Resident Assistant Secretary.

Sealed and delivered in presence of—

C. E. McCLOSKEY.
H. S. TAYLOR.
MARY SERRATE.

Approved by—

JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

A true copy:

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court P. I.

98 UNITED STATES OF AMERICA, *ss:*

To Henry B. McCoy, Insular Collector of Customs of the Philippine Islands, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 120 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Supreme Court of the Philippine Islands, wherein Chieng Ah Sui is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Associate Justice of the Supreme Court of the United States, this 16th day of January, in the year of our Lord one thousand nine hundred and thirteen.

JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

Received copy at Manila, P. I., March 14th, 1913.

H. B. McCOY,
Insular Collector of Customs.

99 On this 14th day of March, in the year of our Lord one thousand nine hundred and thirteen, personally appeared Hartford Beaumont before me, the subscriber, and makes oath that he delivered a true copy of the within citation personally to H. B. McCoy, Insular Collector of Customs of the Philippine Islands.

HARTFORD BEAUMONT,
Cedula #F. 25, Manila, Jan. 3, 1913.

Sworn to and subscribed the 28- day of March, A. D. 1913.

[Seal of Victoriano Dimaguila, Notario Publico, Manila, I. F.]

V. DIMAGUILA,
Notary Public.

My commission expires December 31, 1914. Notarial Registry No. 118, Page 26.

100 In the Supreme Court of the Philippine Islands.

I, Vicente Alvert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Supreme Court, wherein Chieng Ah Sui was appellee and the Insular Collector of Customs was appellant, R. G. No. 6579, a final decree was rendered by said Supreme Court on the 2nd. day of August, A. D. 1912, in favor of said appellant and against the said appellee, and that on the 16th day of January, A. D. 1913, an appeal to the Supreme Court of the United States was allowed.

In testimony whereof I hereunto subscribe my name and affix the

seal of said Supreme Court, at Manila, Philippine Islands, this 12th day of April, A. D. 1913.

V. ALVERT,
Clerk Supreme Court, P. I.

V. A.-ar.

101 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

File No. 6579.

CHIENG AH SUI, Plaintiff and Appellee,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Defendant and Appellant.

Judgment.

August 2, 1912.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 26th day of March, nineteen hundred and twelve.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila dated the 15th day of October nineteen hundred and ten, and from which the above-entitled appeal was taken, be, and the same is hereby revoked and it is ordered that the said Chieng Ah Sui should be returned to the custody of the Insular Collector of Customs, in order that he may be deported, in accordance with the law.

(Sgd.) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

A true copy

V. ALBERT,
Clerk Supreme Court P. I.

Endorsed on cover: File No. 24,018. Philippine Islands Supreme Court. Term No. 338. Chieng Ah Sui, appellant, vs. Henry B. McCoy, Insular Collector of Customs of the Philippine Islands. Filed January 14th, 1914. File No. 24,018.

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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 338. 54

CHIENG AH SUI, APPELLANT,

vs.

HENRY B. McCOY, INSULAR COLLECTOR OF CUSTOMS OF THE PHILIPPINE ISLANDS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE APPELLANT.

CLEMENT L. BOUVÉ,
Attorney for the Appellant.

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IN THE

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IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE APPELLANT.

Statement of Facts.

On or about July 19, 1910, the petitioner, Chieng Ah Sui (Siu), a Chinese boy of the age of sixteen, sought admission to the Philippine Islands as the son of one Chieng Ah Soon, a Chinese merchant domiciled in the city of Manila. He was accompanied by another Chinese person of the name of

Chieng Ah Luy, seeking admission to the Philippines on the same ground, to-wit, as the minor son of said Chieng Ah Soon. The right to enter was based on the treaty of 1880 between the United States and China and the Chinese exclusion acts passed for the purpose of executing the terms of the treaty, which acts were made applicable to the Philippine Islands by the act of Congress of April 29, 1902, as amended and re-enacted by section 5 of the deficiency act of April 27, 1904. The right of both applicants to enter was passed upon by a board of special inquiry appointed by the Collector of Customs of the Philippine Islands, who was the official who, in the islands, enforced the immigration laws and the Chinese exclusion acts.

On July 19, 1910, the board of special inquiry found that Chieng Ah Soon was a Chinese merchant domiciled in Manila, and that the applicant Chieng Ah Luy was his legitimate minor son, and hence entitled to land in the islands; but with regard to the petitioner, Chieng Ah Sui, the board found that he had failed to establish his claim of relationship to Chieng Ah Soon, and thereupon refused him landing.

In the course of its decision the board said:

> "The records of this office show that Cheung Ah Soon, when examined with regard to his family, prior to his departure for China, did not mention any boy by the name of Siu. He at that time stated that his second son was named Wing; whereas on this examination he stated his youngest son was named Wing and his second son was Siu, one of the boys that he is bringing here now" (Rec., 9).

And a little further down:

> "With regard to the second boy, Ah Siu, the Board finds that he bears no resemblance to his alleged father, and in view of the discrepancies above stated and the general unsatisfactory testimony to support the claim of relationship, the Board decides that Ah Soon has failed to establish that the said Ah Siu is his legitimate minor son" (Rec., 9).

Various rehearings were applied for and allowed by the board, but the final result of the application to land was a denial thereof by the Collector of Customs, sustaining the board's finding on appeal. From this order the petitioner sought relief by applying to the court of first instance of the Philippine Islands. In the petition for the writ it was alleged that the Collector had acted in abuse of his authority in ordering the deportation of the petitioner in that his decision that the petitioner was not the son of Chieng Ah Soon had no evidence whatsoever to support it, and was therefore arbitrary, and that "proceeding upon a wrong theory and in violation of law" he confirmed the decision of the board. The petition for the writ was presented on September 26, 1910, and was made returnable in October, 1910, by A. S. Crossfield, the judge of the court of first instance in question.

On October 5, after answer duly filed by the Attorney-General of the Philippine Islands as the attorney for the respondent, the case came before the court for hearing. The court found that the evidence presented before the board of special inquiry was unanimously and generally to the effect that the petitioner was the son of Chieng Ah Soon, and that "there was not any evidence received to dispute or deny this testimony;" that "the only thing which appears in the record is a note at the foot of page 2 of the original proceedings had," which states that when Ah Soon left the Philippine Islands for China he was examined with regard to his family, and that he stated that he had three sons and one daughter, naming them as Ah Luy, Ah Wing, Ah Fua, and Ah Pec, and that consequently Ah Sui, the petitioner, was not named by him.

This appears in the record by way of a note which refers to an inspector's slip which is not in evidence, but which may be taken upon its face to be true, but cannot by any reasonable possibility be taken as sufficient to overthrow the positive testimony of the witnesses who were offered. In the making of the inspector's slip it would be very easy to under-

stand the giving of the name "Ah Sui" and to have written or to have afterwards placed upon the slip the name as "Ah Fua." The speaking of Chinese names is done with an intonation which, unless extreme care is exercised, misunderstanding will result (Rec., 35).

The note in question appears upon the record in this form:

> "NOTE.—These questions" (as to who Ah Fua is) "are asked in view of the fact that the Inspector's Slip, dated July 3, 1909, attached to merchant's affidavit No. 8136, represents that Ah Soon, when examined with regard to his family, prior to his departure for China, stated that he had three sons, Ah Luy, 19; Ah Wing, 15, and Ah Fua, 8, and one daughter, Ah Pec, 2."

Both Ah Soon and the applicant denied all knowledge of "Ah Fua" (Rec., 3, 4).

The court further stated that

> "In the exercise of its powers the board of special inquiry should act with that discretion which men should have who are appointed to exercise such judicial powers, and it clearly appears to me that there was an abuse of the discretion conferred upon the board in disregarding the evidence which was presented and determining results upon the incidental statement upon an inspector's slip which is not in evidence" (Rec., 35).

The court further held that because of the above the Insular Collector of Customs acted in excess of his authority when he confirmed the decision of the board of special inquiry upon appeal on the evidence which had been presented to that board, since there was no evidence to justify that finding. The Government appealed to the Supreme Court of the Philippine Islands, which reversed the decision of the Court of First Instance and ordered the petitioner remanded. The judgment of the Supreme Court was rendered on Au-

gust 6, 1912. Thereafter counsel for the petitioner filed a petition for the allowance of an appeal, which petition was denied by the Supreme Court of the Philippine Islands. Thereupon counsel for the petitioner filed a motion with the Supreme Court of the Philippines, stating that he intended to file a suit in mandamus in this court of the United States, praying that the Supreme Court of the Philippines be ordered to allow the appeal herein, and moving the Supreme Court of the Philippine Islands to fix the amount of the supersedeas bond to stay the execution of the judgment until the termination of the said suit in mandamus. The petition of counsel was granted, and the amount of the bond fixed in the sum of $2,000, the bond being filed on October 19, 1912. On the same day the Supreme Court passed a resolution approving the bond and sureties and ordering the suspension of the execution of the judgment for a period of ninety days "in order that the petitioner may interpose during that period before the Supreme Court of the United States the appeal that he believes proper" (Rec., 51).

Application for the allowance of an appeal was made to this court and on January 16, 1913, was duly allowed (Rec., 56).

Assignment of Errors.

1. That the court erred in holding that a board of special inquiry, organized and acting wholly under the authority of the act of February 20, 1907, had jurisdiction to exclude from the Philippine Islands an alien immigrant on grounds peculiar to the Chinese exclusion laws (act of April 29, 1902, as amended by act of April 29, 1904, and the laws thereby continued and extended).

2. The court erred in holding that the board of special inquiry, organized and acting wholly under the authority of the act of February 20, 1907, had jurisdiction to exclude from the Philippine Islands an alien immigrant who was not found to belong, and who did not belong, to any one of the

classes enumerated in section 2 of the act of February 20, 1907, nor to any other class excluded by the terms of that law.

3. The court erred in holding that the board of special inquiry Collector of Customs (Circular 186) could amend an act of Congress, and could legally divest the tribunal provided by Congress for Chinese immigration cases of its jurisdiction and grant jurisdiction to hear and determine controversies in respect to the rights of Chinese aliens to enter the United States to another and a different tribunal.

4. The court erred in holding that from the decision of the Insular Collector of Customs "an appeal was taken to the Court of First Instance."

5. The court erred in holding that Chieng Ah Soon, the father of the petitioner, had, some months before the arrival of the petitioner, made a declaration which was placed on file in the office of the Insular Ccollector of Customs in which he gave the name of the members of his family.

6. The court erred in holding that Chieng Ah Soon, at the time he departed, did not mention Chieng Ah Sui as a member of his family.

7. The court erred in holding that certain informal notes made by an unknown inspector, not by virtue of any law or regulation whatever, became part of the official records of the Collector of Customs, and that a board of special inquiry had a right to take judicial notice of such notes and to take the statements contained therein as true.

8. The court erred in reversing the decision of the Court of First Instance.

9. The court erred in refusing a rehearing to the petitioner.

10. The court erred in remanding the petitioner to the custody of the Collector of Customs for deportation from the Philippine Islands.

ARGUMENT.

In the petition for the issuance of a writ of *habeas corpus* the grounds for the issuance of the writ were, generally stated to be (*a*) the absence of a fair hearing on the ground that the board had "arbitrarily, unjustly, and against all the evidence and the weight thereof, decided against the right of the petitioner to enter the Philippines," and (*b*) lack of jurisdiction on the part of the board to pass upon the admissibility of the applicant (Rec., 26 and 27).

As before stated, the Court of First Instance found that there was no evidence on which to base such an excluding decision, and that therefore the board had abused its powers, disagreeing, however, with the petitioner on the claim that the board was without jurisdiction to pass upon the applicant's right to enter. The Supreme Court of the Philippine Islands, by direct inference, if not *ipsissimis verbis*, sustained the jurisdiction of the board of special inquiry to pass upon applicant's right to enter, and furthermore held that the board did not abuse its jurisdiction in finding that there was some evidence on which to base the finding that the applicant was not the son of Ah Soon. The question of whether there was any evidence to support the board's finding becomes material for the purpose of determining whether or not the hearing was a fair hearing, for if there was no evidence to support the finding that the petitioner is not the son of Ah Soon, both the courts in this country and in the Philippine Islands are unanimous to the effect that a fair hearing has been denied (Uy Kai Hu *vs.* McCoy, 24 Phil. Rep., 152; Ang Eng Chong *vs.* Collector, 23 Phil. Rep., 614; *Ex parte* Long Lock, 173 Fed., 208; United States *vs.* Williams, 189 Fed., 915; U. S. *vs.* Martin, 193 Fed., 795; United States *vs.* Williams, 175 Fed., 284; U. S. *vs.* Chin Leu, 187 Fed., 544; U. S. *vs.* Williams, 204 Fed., 828; United States *vs.* Klein, 206 Fed., 460; Ng Jun Quan *vs.* U. S., 210 Fed., 617).

The fifth, sixth, and seventh assignments of error go to the question of the existence or non-existence of such evidence, and will be collectively discussed under Point 1.

The first, second, and third assignments of error allege lack of jurisdiction in the board of special inquiry to exclude the applicant, and will be collectively discussed under Point 2.

Point 1.

There is no evidence to support the board's finding that the applicant is not the son of Ah Soon.

As before stated, the Court of First Instance found that the testimony was unanimous to the effect that the applicant is the son of Ah Soon, and that "the only thing" which appears in the record pointing to the contrary is an unsigned and unverified marginal note referring to an inspector's slip which is not in evidence, which in turn refers to an examination, no record of which appears, in which Ah Soon, in enumerating his children in 1909, on departing for China, failed to give the name of the petitioner, "Ah Sui."

The Court of First Instance attributes an abuse of discretion to the board "in disregarding the evidence which was presented, and determining results upon the incidental statement upon an inspector's slip which is not in evidence" (Rec., 35).

The Supreme Court of the Philippines, on the other hand, disagrees sharply with the Court of First Instance, finding that when the father left for China in 1909 "he made a declaration which was placed on file in the office of the Insular Collector of Customs," in which the name of Ah Sui, the applicant, does not appear; that "the declaration constituted a part of the records of the office of the Insular Collector of Customs;" that the board of special inquiry had the right to take judicial notice of their own records, and that in so doing

in this case there was no abuse of discretion on their part (Rec., 39 and 40).

That the Supreme Court of the Philippines appears to be plainly in error as to the fact that Ah Soon filed any such declaration, or that there was any testimony to the effect that such declaration formed a part of the files of the Manila custom-house, is easily ascertainable from the record itself. There is not one word of testimony to this effect, the only suggestion that the father made any such remark being contained in the marginal note, referring to the unsigned inspector's slip not introduced in evidence, which in turn is said to refer to an examination in which, it is said, the father made the contradictory statement. No such statement was offered in evidence.

The questions which arise in connection with this point are two: (*a*) Was the alleged contradictory statement of Ah Soon in 1909 in evidence? (*b*) If the slip referring to the examination were in evidence, did it, on all the facts in the case, tend to prove that Ah Sui is not the son of Ah Soon? If it can be fairly claimed that Ah Soon's alleged contradictory statement was not before the board, the exclusion of the applicant, based on such statement wholly, or in part, was unfair; and if competent proof of such statement was before the board, and the statement itself constitutes no evidence of the fact that the applicant is not the son of Ah Soon, there, too, the excluding decision is arbitrary and unjust.

A. *The alleged statement in* 1909 *was not in evidence.*

Unless there is some evidence of the contents of the statement Ah Soon is alleged to have made in 1909, the board acted arbitrarily and unjustly in finding that a discrepancy existed. There must be some proof of the fact of that contradiction, and its existence as a proven fact must depend on more than mere inference; just as in the cases cited on page 4, *ante*, the various administrative decisions against the ad-

missibility of the various applicants must be supported by *some* evidence (and see U. S. *vs.* Redfern, 210 Fed., 548). That the contention that this contradiction exists is supported by inference only appears from the following circumstances:

The board finds that Ah Soon's contention that Ah Sui is his son is not entitled to credence because it is in conflict with what it is stated that he said when examined the preceding year on departing for China. The discrepancy is said to exist in the fact that applicant's name is given as Sui, whereas, in enumerating the members of his family in 1909 Ah Soon, the father, did not mention a boy by the name of Ah Sui. He is said, however, to have mentioned a boy by the name of Ah Fua. No report of the examination of 1909 referred to is to be found in the record. All that the latter contains is a reference, unsigned, unverified, and inserted by way of a marginal note, referring to an inspector's slip, also unsigned and unverified, which, in its turn, refers to the examination in which the customs authorities claim the father gave the name Ah Fua, and did not give the name Ah Sui. The marginal note is addressed to the inspector's slip, and not to the alleged examination. It is therefore no more than fair to assume that when the examination was held, no stenographic record thereof was made, and that the inspector's slip is the only document containing any reference to such examination. But neither the name of the inspector who may be assumed to have conducted the examination nor the name of the inspector who may be assumed to have written the slip appears in the testimony; there is not even any evidence offered to show that the party who conducted the examination wrote the slip. At best, the names said to be written on the slip constitute but the effort of the writer to reproduce the names Ah Soon is supposed to have given for his children in 1909 as the person conducting the examination heard and understood them.

In a word, the "discrepancy" alleged by the customs authorities, and on which they are found by both courts to have

chiefly relied as the ground for their excluding decision, is found by comparing with the father's statement on applying for the admission of the petitioner in 1910 a statement said to have been made by the father in the course of an examination in 1909, of which there is no record whatever and which is consequently not offered in evidence, is merely referred to in an unsigned, unverified inspector's slip, which itself is not offered in evidence and forms no part of the record, which in turn is referred to in an unsigned, unverified statement injected into the record by way of a marginal note.

It is thought that when, as here, the immigration authorities rely on an alleged contradictory statement to justify their order of exclusion, the fact that such statement was actually made as alleged must be made to appear by at least reasonable proof. It would seem no more than reasonable to require the customs authorities to prove the contents of the examination said to contain the statement, or else give some good reason for not doing so. This they have not done or attempted to do. They refer instead to an unsigned inspector's slip purporting to include by reference some part of that examination. Conceding this for the moment to constitute competent proof of the fact, they make no effort to produce the slip itself, nor to explain their failure to do so. And, finally, conceding again, *arguendo*, that oral testimony of the contents of the slip is competent evidence of the contents of the alleged examination, the customs authorities still fail to present a word of testimony on the point. It seems manifestly unfair to base an order of exclusion on a fact declared to have been found where the record shows that the Government has failed to call a single witness to testify to the alleged fact. The more particularly where, as here, the record shows that Ah Soon was not confronted with the alleged contradictory statement, nor with the fact that the Bureau of Customs had in its possession this document on the strength of which it seeks to exclude the petitioner. The failure to confront him with an alleged discrepancy or to give

him any opportunity to explain it is not compatible with the ordinary principles of fair play (*Ex rel. Kersuki Sata*, 215 Fed., 173; also *Ex parte* Lew Lin Shew, 217 Fed., 317; *Ex parte* Lam Pui, 217 Fed., 456; Hanges *vs.* Whitfield, 209 Fed., 675).

The further suggestion may be made: The inspector's slip purporting to contain the alleged statement not being in evidence, there is nothing to indicate what the condition of the slip is, whether legible or illegible, whether typewritten or written in ink or pencil. There is nothing to show that it was ever signed by an inspector in the service, for, although designated in the marginal note in the record as an inspector's slip, the name of the inspector who is purported to have drawn it does not appear; nor does the record show, or even affirmatively suggest, that the inspector who wrote the slip conducted the examination said to contain the discrepancy. That portion of the slip claimed to be so detrimental to the interests of the applicant constitutes but an attempt to reproduce in English letters and according to English phonetics sounds constituting Chinese names coming from the lips of a Chinese person or someone attempting to reproduce his utterance of them. As was said by Judge Crossfield:

> "In the making of the inspector's slip it would be very easy to misunderstand the giving of the name 'Ah Sui' and to have written or to have afterwards placed upon the slip the name as 'Ah Fua.' The speaking of the Chinese names is done with an intonation which, unless extreme care is exercised, misunderstanding will result" (Rec., 35).

We may say, in closing on this point, that the question as to whether or not the remarks of an inspector injected into a record dealing with certain points covered by the matter in controversy has already been made the subject of judicial comment, wherein it was held to be a wholly improper proceeding and to constitute no evidence whatsoever of the facts which it purports to relate. *Ex rel.* Lam Fuk Tak, 217 Fed., 468.

This holding would seem to be somewhat analogous to those many decisions of the Federal courts, including at least one of this court, to the effect that a so-called certificate of discharge issued by a United States Commissioner in Chinese deportation proceedings is not evidence of such adjudication (Ah How *vs.* United States, 193 U. S., 65; 48 Law Ed., 619; *Ex parte* Lung Foot, 174 Fed., 70) or of the facts on which the Commissioner's alleged finding is based (*Ex parte* Lung Wing Wun, 161 Fed., 211; *Ex parte* Mac Fock, 207 Fed., 696).

B. *The inspector's slip referring to the examination of* 1909, *if in evidence, does not tend to prove that the applicant is not the son of Ah Soon.*

Conceding, *arguendo*, that the inspector's slip is in evidence, an examination of the contents thereof in connection with other features of the case would show that it tends to corroborate the claim made by the applicant rather than to dispute it. Assuming the slip to contain what it is claimed to contain, we find that in 1909 Ah Soon stated that he had a family of four children, three sons, aged nineteen, fifteen, and eight, and one daughter of the age of two. On his return to the Philippines in 1910 he claims that he has three sons of the ages of twenty, sixteen and eight (nine), and a daughter of the age of three. If his description at the time that he left Manila had been by age and sex merely, there would have been no discrepancy whatsoever. He claims no more now than he claimed then. He at that time definitely stated that he was the father of a son fifteen years of age. A year later he seeks admission, bringing with him a boy of sixteen, who he claims is his son, mentioned by him before he left in 1909. This fact seems to be entirely overlooked by the Supreme Court of the Philippines, which, in its language on page 39 of the record, that "children do not reach the age of sixteen years in a few months," seems to imply

that the applicant is purely invented for the occasion. Why did the father have to invent a boy for the occasion? He had already named a boy a year before as being his son, and fifteen years old at that time. Was there any reason in 1909 for him to have named a son of fifteen unless he had him? None, except on the theory that his naming a son of fifteen in 1909 was merely for the purpose of importing some one's else son. Granting this, if in 1909 he intended to import "Ah Fua," the son of somebody else, would he have been so utterly foolish, so incalculably stupid as to drill the boy with the necessary facts concerning his "family" and yet forget to tell him that his name was Ah Fua? Which is more likely, that Ah Soon, s[illegible] enough to plot for the fraudulent admission of a Chi[illegible]oy under the guise of his son, preparing the way by designating him by name to an inspector on departure, proceeded to bring him to the Philippines without informing him of his supposed name, or that the inspector, in drawing up the slip, failed to spell the applicant's name in English characters as it is spelled in the present record?

Strangely enough, this very record affords an example of the likelihood of such a mistake occurring. The applicant, after having stated that Chieng Ah Soon is his father, is asked the question (Rec., 3): "Is there anybody at home called Ah Fua?" Answer: "Do you mean Fu, my father?"

The father's name is Soon. The boy being asked if he knows anybody by a name which to our ears sounds like Fua, asks the examiner if he refers to his father, whose last name sounds to our ears like Soon. If the sound represented by "Fua" and Soon have a similarity of sound to a Chinese person, how very obvious that the sound Sui, or, as it is also written in the record, Siu, when pronounced by a Chinese may sound very much like Fua to the ear of an English-speaking person.

Referring again to the fact that the Supreme Court finds that Ah Soon "made a declaration which was placed on file

in the office of the Insular Collector of Customs, in which he gave the names of the members of his family" (Rec., 39)—a finding wholly unsupported by the record, which contains no suggestion, verified or unverified, that Ah Soon's statement was ever placed on file in that office or elsewhere—it should be borne in mind that the record contains no suggestion that Ah Soon's alleged statement was a "declaration" in any sense of the word. While the record does show (pages 7 and 8) that Ah Soon did file an affidavit as to his mercantile status at the time of his departure in 1909, there is nothing to indicate that the statement as to his family, if made as claimed, was a part of that affidavit, or was solemnified by an oath, or, in fact, was even considered of sufficient importance to reduce to writing. If it formed a part of the records of the custom-house instead of the inspector's slip, it surely would have been adverted to as such in the marginal note.

The danger and absolute unfairness of making the right of an alien to enter the United States or its possessions depend on the contents of the inspector's slip is further emphasized by the following circumstance: Aside from containing the name "Ah Fua," the slip is said to state that "Ah Fua" is a boy of eight, whereas Ah Wing (another of Ah Soon's sons mentioned by him, and all other witnesses as such on the occasion his present application, and as being eight in 1909) is referred to in the slip as a boy of fifteen. Whether Ah Wing is Ah Soon's son or not is immaterial to the present issue; yet we find him claimed as such in 1909, and again in 1910, when the question of his admission to the Philippines is not even suggested. There would seem to be no reason for mentioning him or his age, either in 1909 or 1910, other than the fact that he is the son of Ah Soon.

To sum up, it would seem that the contents of the inspector's slip, showing, as it does, that in 1909 the father claimed the same number of children that he claimed on his return in 1910, as of the same sexes that he gave on his re-

turn, giving four different ages corresponding exactly to the ages given on his return, is of itself strong evidence to show that the difference it is alleged to contain as to the Chinese names given is due to error on the part of the person drawing up the slip, and that, on the whole, the contents of the slip tend to corroborate rather than to contradict the claim of the petitioner that he is the son of Ah Soon. In any event, as stated by the trial judge, the presence of the name Ah Fua on the slip, instead of "Ah Sui," "cannot by any reasonable possibility be taken as sufficient to overthrow the positive testimony of the witnesses who were offered" (Rec., 35) in 1910. The data concerning the ages and sexes of Ah Soon's children were easily ascertainable in 1909, and at a very small risk of error. The exact reproduction of their names in English—conceding, *arguendo*, this to have been done by the unknown inspector who drew up the slip—was, and must remain, for English-speaking peoples a practical impossibility.

Point 2.

The Board of Special Inquiry had no jurisdiction to pass on the right of the petitioner to enter the Philippines under the Chinese Exclusion Law.

The present immigration act (February 20, 1907), as amended by the act of March 26, 1910, is in force in the Philippine Islands (34 Stat. at L., 898, sec. 33; Compilation of the Laws of the Philippine Commission (1907), p. 124, 135). Ever since 1899 the immigration regulations of the Philippine government have been enforced by the Collector of Customs (*In re* Allen, 2 Phil. Rep., 630; Jao Igco *vs.* Shuster, 10 Phil. Rep., 448; Ngo-Ti *vs.* Shuster, 7 Phil. Rep., 355; Juan Co. *vs.* Rafferty, 14 Phil. Rep., 35). By the act of Congress of April 29, 1902 (32 Stat. at L., 428), as reenacted by section 5 of the deficiency act of April 27, 1904

(33 Stat. at L., 394, 428), the Chinese exclusion laws were made applicable to the Philippines. Section 6 of the act of Congress of February 6, 1905 (33 Stat., at L. pt. 1, p. 692), provides that "the immigration laws of the United States in force in the Philippine Islands shall be administered by the officers of the general government thereof, designated by appropriate legislation of said government. * * *"

In the customs administrative act passed by the Philippine Commission February 6, 1902 (Public Laws of the Philippine Commission, vol. 1, p. 788, No. 355), it is made the duty of the customs service to execute the laws relating to immigration, and by section 19 thereof it is made the duty of the Insular Collector to make and promulgate general rules and regulations not inconsistent with the law, directing the manner of executing the customs laws and the laws relating to commerce and immigration. See *In re* Allen, 2 Phil. Rep., p. 630. Act No. 702 of the Philippine Commission, enacted March 17, 1903, provides in its first section that "the Collector of Customs for the Philippine Archipelago is hereby authorized and directed to make the registration of all Chinese laborers in the Philippine Islands, as required and prescribed by sec. 4 of the act of Congress approved April twenty-ninth, nineteen hundred and two, entitled 'An act to prohibit the coming into and regulate the residence within the United States, its territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent,' and to employ for that purpose the personnel of the Philippine Customs Service, the provincial and military officers hereinafter provided, and such other persons as may be necessary."

The above brief sketch of the legislation pertinent to the present issue is submitted merely for the purpose of showing that the exigencies of the situation have demanded, and Congress has, in fact, provided that the personnel to execute the Chinese exclusion and immigration laws of the United States in the Philippines is different from that designated in

those acts to carry them into effect in the continental boundaries of the United States; that while here the Secretary of Labor has the last word on appeals on questions of fact in such cases, in the Philippines it is the Collector of Customs. As here it is necessary for the Secretary of Labor to provide rules and regulations for the enforcement of these acts dealing with the admission and exclusion of aliens, in the Philippines it is equally necessary that the Collector be vested with similar powers. As here Congress imposes the duty of making such rules and regulations on the Secretary, so in the Philippines the Philippine Commission, by authority of the act of Congress February, 1905, imposes that duty on the Collector of Customs.

But such rules and regulations, to be valid, must not be inconsistent with the law or laws they are promulgated to enforce (United States *vs.* Hemet, 161 Fed., 185; Toy Tong *vs.* United States, 146 Fed., 343). While under the pertinent acts above cited the Philippine government was given the power to designate the Collector of Customs to occupy, in relation to the immigration and Chinese exclusion laws, a position analogous to that of the Secretary of Labor to those laws in the United States; while the act of the commission vesting him with power to provide rules and regulations for the enforcement of the law, not inconsistent with the provisions thereof, might be taken to include the power to appoint subordinates, whose duty it should be to see that those regulations were enforced, it could scarcely be contended either that Congress, in authorizing the Philippine Commission to designate officers to enforce the immigration or Chinese exclusion laws, authorized them to vest him as the administrative head of that branch of the service with greater powers than the Secretary of Labor, or that the duty imposed upon him to promulgate rules and regulations for the better execution of the law carried with it the power to vest boards of special inquiry in the Philippine Islands with greater power than boards of special inquiry in the United States.

Yet it appears that this is precisely what the Collector of Customs has done—the very thing of which the petitioner has complained before both courts in the Philippines, and is now alleged as error here.

On March 6, 1907, the Collector of Customs issued his Chinese and Immigration Circular No. 186, which has been construed by the Supreme Court of the Philippines as ordering that the right of Chinese seeking admission into the Philippine Islands under the laws and treaty applicable to Chinese shall be passed upon by the board of special inquiry created by the act of February 20, 1907 (Uy Kai Hu *vs.* McCoy, 24 Phil. Rep., 152). The board of special inquiry is an instrument unknown to the Chinese exclusion law, and pre-eminently and solely a creature of the immigration act.

Section 24 of that act contains the following provision:

> "Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a Board of Special Inquiry."

The term "every alien not entitled to land" necessarily means every alien not entitled to land under section 2 of the immigration act, which sets out at length the classes of aliens excluded, which classes do not, however, include Chinese in the situation of the petitioner, who is suffering from none of the disabilities which operate to exclude foreigners under the immigration act.

Section 25:

> "That such boards of special inquiry shall be appointed by the Commissioner of Immigration at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of law. Each board shall consist of three members who shall be elected from such of the immigrant officials in the service as the Commissioner General of Immigration, with the approval of the Secretary of Commerce and

> Labor, shall from time to time designate as qualified to serve on such boards: provided, that at ports where there are fewer than three immigrant inspectors the Secretary of Commerce and Labor upon the recommendation of the Commissioner General of Immigration may designate other United States officials for service on such boards of special inquiry. Such boards shall have authority to determine whether the alien who has been duly held shall be allowed to land or shall be deported."

As appears in the last sentence of that part of the section above quoted, the authority of the board as to persons coming before it is necessarily limited to aliens seeking admission under the immigration act, and who are detained by the examining inspector on the ground that they are not beyond a doubt free from the disabilities which would operate to exclude them.

Section 43 of the immigration act contains the following proviso:

> "This act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent."

This constitutes, of course, a recognition on the face of the act of another set of laws applicable to Chinese persons in the situation of the petitioner, and recognizes further, by necessary inference, the existence of a different set of machinery from that constituting the board of special inquiry for determining the rights of Chinese seeking, *as Chinese*, to enter the United States or its dependencies.

Section 22 of the act of February 20, 1907, authorizes the Secretary to direct the Commissioner General to establish rules and regulations not inconsistent with law deemed best calculated for carrying out the provisions of the act itself. It could hardly be contended that under guise of this authority the Secretary of Labor could lawfully vest the boards of

special inquiry with powers other than those designated in section 25, and he would certainly be doing this if he should issue a regulation purporting to authorize the members of such boards to pass upon the right of foreigners other than those held for examination under section 2 of the act to enter the United States. If this is true of the Secretary of Labor, it is equally true of the Collector of Customs of the Philippine archipelago.

Conclusion.

(*a*) The board of special inquiry, in rendering its decision excluding the petitioner from the Philippine Islands, and the Collector of Customs in confirming that decision on appeal, committed an abuse of discretion, and acted arbitrarily and unjustly in that it accepted as proven facts of which there was no proof offered in the record, thereby rendering a finding with no evidence to support it and denying the petitioner a fair hearing.

(*b*) The board had no jurisdiction to pass upon the application of the petitioner who was seeking admission under the Chinese exclusion laws, and was not examined or found inadmissible under the immigration law.

Wherefore the undersigned requests that the decision of the Supreme Court of the Philippines be reversed.

Respectfully submitted,

C. L. BOUVÉ,
Attorney for Appellant.

Office Supreme Court, U. S.
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No. 54

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

CHIENG AH SUL, APPELLANT,

v.

HENRY B. McCOY, APPELLEE,

Insular Collector of Customs of the Philippine Islands.

On Appeal from the Supreme Court of the Philippine Islands.

BRIEF FOR APPELLEE.

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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

CHIENG AH SUI, APPELLANT,

v.

HENRY B. MCCOY, *Insular Collector of Customs of the Philippine Islands.*

No. 338.

BRIEF FOR APPELLEE.

STATEMENT.

The case is here on appeal from a final judgment of the supreme court of the Philippine Islands reversing a judgment of the court of first instance of the City of Manila which, upon *habeas corpus*, reviewed and reversed a decision of the insular administrative officials denying appellant admission into said islands.

FACTS.

Appellant's statement of the case, except where argumentative, is substantially correct. It does not, however, present in proper perspective those facts which are of primary pertinence to the principal issue, namely, the question of propriety of judicial

interference with the administrative decision in this case. With this in view, the case may be briefly stated thus:

A Chinese merchant domiciled in Manila returned thereto after a brief visit to China accompanied by two boys—appellant and another—whom he claimed to be his minor children, and who sought admission into the Philippines on that ground. Admission was granted one, but denied to this appellant, on the formal finding by the administrative officials that he had failed to establish his claim as the legitimate minor son of said merchant. The administrative proceedings were not marked by any irregularity or unusual thing, unless it be found in the number of rehearings granted appellant and the more than ample time and opportunity afforded him to prove the prerequisite relationship. The board of special inquiry (three officers of the Customs Bureau charged by law in the Philippines with making the examination of applicants touching their right to admission, from whose decision an appeal lies to the Insular Collector) held on July 19, 1910, a first full hearing, and unanimously decided that applicant had failed to establish the claim of relationship upon which his admission depended, and thereupon denied him admission. Thereafter two different rehearings were had, in each instance upon appellant's petition that additional Chinese witnesses be heard in his behalf, and in each instance the board, after weighing the evidence, unanimously adhered to its former finding.

In each instance appeal was noted and record transmitted to the Insular Collector, but the rehearings were granted before the appeal was decided. Finally, appeal was taken to the Insular Collector, and that officer, finding that there had been "a full, fair and complete hearing" which resulted in a finding "amply warranted from the evidence submitted," affirmed the board's decision (R. 25). These hearings extended from July 19 to September 3, 1910, over a period of seven weeks. Eleven days after the decision on appeal applicant petitioned for another—the fourth—hearing on the ground that he desired to present more Chinese witnesses, which was denied. The Collector's refusal to reopen the case after a decision on appeal and the inability of the board to be convinced by mere number and unanimity of his Chinese witnesses, appellant characterizes as "unjust and arbitrary and an abuse of authority and discretion." Thereupon he petitioned the court of first instance of Manila for a writ of *habeas corpus*, alleging in effect (1) that the entire administrative machinery for the execution of the Chinese exclusion laws in the Philippines was unlawfully constituted and without jurisdiction, and (2) that it was unjust and arbitrary for the board to hold that the unanimous and uncontradicted testimony of his several witnesses, all of whom were Chinese, had not satisfactorily established the fact of his relationship, and unjust and arbitrary for the Insular Collector on appeal to affirm the decision and deny thereafter the request

for another—the fourth—hearing (R. 26, 27). Respondent made a general and special denial (R. 28). The judge of the court of first instance, evidently mistaking, among other things, the issue upon which jurisdiction of the court must depend, proceeded forthwith to take testimony on the merits (R. 30–33), which, however, he assures us in his opinion did not influence his judgment (R. 35, 39). The court of first instance held that while the administrative machinery was not without jurisdiction it had abused its discretion in "disregarding" the evidence presented to the board, inasmuch as the evidence was "unanimously and unquestionably to the effect that this petitioner is the son of Chieng Ah Soon," and that nothing appeared that can "by any reasonable possibility be taken as sufficient to *overthrow* the positive testimony of the witnesses offered." The court of first instance thereupon ordered that petitioner be released and allowed to land. Upon appeal by the Government, the supreme court of the Philippines differed sharply with the lower court, found no evidence of unjust and arbitrary conduct or abuse of discretion, and therefore no room for judicial intervention; ordered that the action of the lower court be revoked and petitioner returned to proper custody for deportation (R. 38–40); denied a motion for a new trial (R. 41–43); and denied an appeal (R. 46), which was subsequently allowed, however, by a justice of this court. The opinion of the supreme court of the Philippines now appears in 22 Phil. Rep. 361.

THE ISSUES.

The issues in this case are (1) as to the jurisdiction of the board of special inquiry to make the examination and decision upon the right of admission which the law requires, and (2) whether the decision of exclusion in this case made and confirmed was final beyond the power of judicial intervention.

The questions presented upon this record are so simple—so clearly settled upon principle, by consideration for the language and purpose of the statutes, and by authoritative decisions of this court and others—in short, so devoid of merit, and so manifestly decided right by the highest local judicial tribunal, that this court might well have been saved from hearing argument on the so-called merits. Such importance as appellant's contentions have, attaches chiefly by reason of the fact that for five years now, through insistence and resourcefulness, and because of the erroneous interposition of a judge of first instance, he has escaped the lawful order of deportation which Congress made final, so far as it is within the power of Congress to make it final.

ARGUMENT.

Taking the affirmative of these issues, and reversing the order of arrangement and discussion adopted by appellant, we shall argue briefly:

1. That the board of special inquiry was lawfully constituted and of competent jurisdiction to pass on the right of the appellant to enter the Philippines under the Chinese exclusion law.

2. As the law requires, there was a full and fair hearing in this case by the duly constituted administrative officials, without abuse of authority or discretion: their decision, therefore, properly affirmed on appeal, was beyond the power of judicial intervention.

I.

THE BOARD OF SPECIAL INQUIRY WAS LAWFULLY CONSTITUTED AND OF COMPETENT JURISDICTION TO PASS UPON THE RIGHT OF THE APPELLANT TO ENTER THE PHILIPPINES UNDER THE CHINESE EXCLUSION LAW.

This jurisdictional question, not mentioned before the board and given short shrift by both courts below, has earmarks of a "make-weight" to give a suggestion of strength to a frail case. If it has any merit it is difficult to discover. The slightest substantial basis for the objection is not revealed to ordinary perception.

If understood, the objection is, that although the Philippine administration of the immigration laws, including the Chinese exclusion acts, is through the Customs Bureau and under the Collector, and although the Collector appoints the board of examiners prescribed by the general act to make the examination thereunder and must also provide for the examination and designate the examiners which are required but not denominated by the exclusion acts, nevertheless, he may not designate the board denominated by the general statute, to conduct the examination required

by the special and related statute, though the two duties are to be performed under his direction, are in the same field of administration, and are perfectly compatible. The theory is that to do so would vest such board with greater powers than it has or can have under the general immigration law. The statement of the objection exposes its fallaciousness. The power of the board as such is not increased. It is simply put to a lawful and convenient use, for which it is specially equipped and adapted.

The argument points to the fact that it is done differently here at home. True, but it need not be; it can be done the same way here. Here, the administration of the immigration laws, including the exclusion laws, is under the Department of Labor, with the Secretary of Labor at the head; there it is under the Bureau of Customs (33 Stat. 692), with the Insular Collector of Customs at the head. The general immigration law provides for an administrative examination to determine general admissibility by a board which it denominates, a board of special inquiry (sec. 25, 34 Stat. 898; 36 Stat. 263); the exclusion act requires an examination which will protect both the United States and the applicant (25 Stat. 476), but, failing to designate the examiner, leaves that to be done by the department head. For that purpose, here the Secretary of Labor has designated a single official called an inspector;[1] there, the Insu-

[1]NOTE.—The rules governing the admission of Chinese prescribed by the Secretary of Labor (Rule 4) require examination without prescribing by whom it shall be conducted. As a matter of fact, however, it is conducted by a single inspector.

lar Collector has designated the board that makes the general examination. A Chinaman is examined first under the general law and then under the exclusion law (24 Op. Atty. Gen. 706; 161 Fed. 627; 163 Fed. 1021; 164 Fed. 506; 170 Fed. 566; 174 Fed. 674; 176 Fed. 933, 998; 183 Fed. 260; 223 U. S. 67; Rule 3, Rules Governing Admission of Chinese, Department of Labor, January 24, 1914); if he is found generally admissible then he is examined to determine his admissibility as a Chinaman. So here, in theory at least, a Chinaman is examined by the special board on the question of general admissibility, and then by a single inspector on his admissibility as a Chinese; there, he is examined by the special board on the question of general admissibility, and then by the special board on his admissibility as a Chinese. Whatever the difference in the methods of the special Chinese examination obtaining here and those obtaining there, legally speaking it means nothing, in view of the departmental authority in each place to make all needful rules and regulations concerning it. That the methods do differ slightly is due, of course, to administrative convenience.

It being conceded that it is the duty and authority of the Insular Collector in the Philippines, as it is of the Secretary of Labor here, to designate the Chinese examiner, why in law or reason can he not designate for the purpose the board which is engaged under the same bureau, in the same service, under the same supervision, examining all other appli-

cants? Not only is it entirely compatible for the board to examine the Chinese applicant, but every sensible consideration suggests the advisability of the course where, as in the Philippines, it lends itself to convenience of administration.

As a practical consideration, it could hardly be suggested that an examination by one man contains elements of fairness not to be found in an examination by three men. The system, well tried and established, is both just and efficacious. The insular supreme court, called upon in numerous instances to examine into the exclusion laws and their administration, has evinced no doubt of the legality of the administrative procedure in general or of the functions of this board in particular (*Wampo* v. *Collector*, 24 Phil. Rep. 431; *Uy Kai Hu* v. *McCoy*, ibid. 151, 155, and numerous cases therein cited); and it is believed this court will entertain none.

II.

AS THE LAW REQUIRES, THERE WAS A FULL AND FAIR HEARING IN THIS CASE BY THE DULY CONSTITUTED ADMINISTRATIVE OFFICIALS, WITHOUT ABUSE OF AUTHORITY OR DISCRETION: THEIR DECISION, THEREFORE, PROPERLY AFFIRMED ON APPEAL, WAS BEYOND THE POWER OF JUDICIAL INTERVENTION.

The Act of August 18, 1894 (28 Stat. 372, 390), the Act of April 29, 1902 (32 Stat. 176); section 5 of the Act of April 27, 1904 (33 Stat. 394, 428); and section 6 of the Act of February 6, 1905 (33 Stat. 692), make

the decision of the appropriate immigration officials in the Philippines final until reversed on appeal to the Insular Collector of Customs; and, if it does not *affirmatively* appear that the executive officers have acted in some unlawful way and abused their authority and discretion, their finding upon the question of relationship, upon the establishment of which by the applicant his admissibility depends, must be deemed to be conclusive, and is not subject to review by the courts. *United States* v. *Ju Toy*, 198 U. S. 253; *Chin Yow* v. *United States*, 208 U. S. 8; *Tang Tun* v. *Edsell*, 223 U. S. 673, and the cases hereinafter cited and discussed.

The vital question here is whether, as appellant contends, the administrative officials did abuse their authority by not accepting the uncontradicted and unanimous testimony of his several witnesses to the effect that he was a minor son of the Chinese merchant, but finding upon the other hand that that fact was not satisfactorily established by him.

1. Appellant's theory of the case, with which the court of first instance concurred, involves an erroneous idea of the location of the burden of proof.

Appellant says the decision of the administrative officials was "against all the evidence and the weight thereof" (R. 26, 41, 45), and argues "that there is no evidence to support the board's finding that applicant is not the son of Ah Soon." And the court of first instance, discussing the evidence, says it "was unanimously and unquestionably to the effect that

this petitioner is the son of the merchant." And later on, with reference to a discrediting fact, says "it could not by any reasonable possibility be taken as sufficient to *overthrow* the positive testimony of the witnesses offered" (R. 35). Thus is revealed the ground upon which judicial intervention was invoked and obtained. The burden of proof is upon applicant to show admissibility. *In re Moy Quong Shing*, 125 Fed. 641; *United States* v. *Too Toy*, 185 Fed. 838; Sec. 3, Act of May 5, 1892 (27 Stat. 25); Rules 3 and 4, Rules Governing Admission of Chinese, Department of Labor, January 24, 1914; Mr. Justice Holmes's Caution in the Chin Yow case, *supra; Ah How* v. *United States*, 193 U. S. 65, 76. The purpose of the Chinese exclusion acts and regulations adopted for making them effective is to *prevent* the landing of Chinese persons in the United States and its territory unless it affirmatively appears that they are exempt from the general provisions. Therefore, it is the duty of the immigration officials to exclude every Chinaman who does not show himself entitled under the law to enter. If officials should permit entry of any one of that race without demanding satisfactory proof of the exempting facts, they would grossly violate their duty. Any other rule would emasculate the law. It is not a question of the immigration officials supporting their finding with evidence, nor of overthrowing the evidence adduced by applicant. He must, if he would not be denied admission, establish his right of entry. Of course, if

the burden of proof is upon the applicant, the immigration officials may not be satisfied by the affirmative evidence produced.

2. No presumption of unfairness, arbitrariness or abuse of discretion and authority can arise from the fact alone that the immigration officials did not accept the testimony of applicant's witnesses, even though it was uncontradicted.

Applicant's entire case depends upon the contrary view, yet even the cases he cites (Brief, p. 7) do not sustain him. An examination of his cases reveals that some of them are in no wise applicable; some are directly opposed to the proposition he asserts (173 Fed. 208; 175 Fed. 274); some contain only loose dicta pointing his way (such are the two Philippine cases cited); and others, misapplied, while recognizing the finality of the administrative decision upon questions of fact, found that the decision under review involved what amounted to an error of law (189 Fed. 915; 193 Fed. 795; 187 Fed. 544).

It is settled that immigration officials are not compelled to accept the testimony of a witness or any number of witnesses simply because it is all one way and uncontradicted. As a general proposition, a proponent, having the risk of non-persuasion, may fail to produce evidence sufficient to cause action, even though there be no evidence in opposition. As another general proposition administrative officers, like judges and juries, charged with final decision as to facts, are not bound by testimony they do not believe. The theory that witnesses must be believed

when unimpeached and uncontradicted is unsound; and this is especially true in the administration of the immigration laws where there are peculiar opportunities for designing and interested aliens to submit, with impunity, evidence of a character impossible of contradiction. An examination of the Chinese exclusion cases shows convincingly that no presumption against finality of findings of fact, no presumption of unfairness, arbitrary conduct, or abuse of discretion, can arise from the fact alone (and it must be remembered there is none other in this case) that the board was not persuaded by such testimony. *Quock Ting* v. *United States*, 140 U. S. 417, 420; *Lee Lung* v. *Patterson*, 186 U. S. 168; *In re Jew Wong Loy*, 91 Fed. 240; *Lee Sing Far* v. *United States*, 94 Fed. 834; *In re Louie You*, 97 Fed. 580; *Woey Ho* v. *United States*, 109 Fed. 888; *Quong Sue* v. *United States*, 116 Fed. 316; *United States* v. *Lee Huen*, 118 Fed. 442; *Ex parte Long Lock*, 173 Fed. 214; *Kum Sue* v. *United States*, 179 Fed. 370; *In re Yim Quock Leung*, 1 U. S. D. C. Ha. 166; *Tan Beko* v. *Collector of Customs*, 26 Phil. Rep. 254. It would be mere affectation to cite others.

3. Appellant did not, nor could he, make any affirmative showing affecting the integrity of the administrative proceedings.

He simply says that a decision so contrary to all the evidence and the weight thereof must, of necessity, be unfair and arbitrary. He has no other complaint; no other fault is found with the regularity,

propriety and legality of the proceedings; there is no suggestion of bias, prejudice, lack of integrity or misconduct of any kind on the part of the officials; every opportunity, every facility, was afforded the detained to establish his right to admission; indeed, the proceeding in every formal aspect was (what it need not have been) a judicial hearing, marked by judicial temperament, patience and the fullest regard for the rights of the applicant. The detained was represented by counsel; all of his witnesses were fully and fairly heard. When the testimony at the first hearing was thought to be unsatisfactory the board suggested that he get other witnesses, and counsel failing in this submitted the case for disposition and decision (R. 1, 8); the board gave the testimony full consideration with an apparent disposition to favor the applicant, as shown by the fact that the serious doubt of the status of the merchant was resolved in his favor and the other boy was admitted as his son. The board expressed its reasons for not regarding the testimony as sufficient in the case of the other boy, this appellant. Four days later, on request, the board granted a rehearing, at which it heard and considered the testimony of another Chinaman, and again expressed its reasons for not being satisfied (R. 11–14). About three weeks later, on request, another rehearing was had and other Chinese witnesses were examined; the board upon consideration of their testimony again expressed its views of the unsatisfactory character of the evidence

(R. 23). The Collector himself gave the fullest consideration to the case on appeal, and in a formal opinion expressed his views for affirming the decision (R. 24, 25); and when an application was made to reopen the case after it had been finally decided on appeal he again expressed his reasons for denying the request and affirming the findings (R. 25).

When officials give an applicant such consideration, hear his cause four times, consume seven weeks in hearing and disposing of it, show extreme fairness in resolving all doubts in favor of the "father's" status, and admit one of his "sons," and exclude the other only because the evidence as they see it does not satisfy them that he is the son of this merchant—when administrative officials under oath do all these things, we might have viewed the evidence differently, but we cannot say there is a basis for the charge of unfairness either in law or in fact. In such a case no court has jurisdiction to intervene.

4. The evidence, when examined under the rules governing a review, will be found to be such that it cannot even be said that the decision was wrong, not to mention arbitrary.

This is so, independently of the express declaration by Congress that these administrative decisions shall be final and of the limitations on the scope of judicial review in a *habeas corpus* proceeding. In the first place, the board did not believe these Chinese witnesses, and it is difficult to say that they should have been believed. Although the decision was rendered against the testimony of several witnesses to the same

effect, there are numerous circumstances tending to lessen the probability that the testimony was true.

It is a well known fact that the enforcement of the Chinese exclusion law is attended with great embarrassment from the suspicious nature in many instances of the testimony offered to establish the fact upon which admission depends, arising from racial clannishness, general community of interests, and the loose notions entertained by the witnesses of the obligations of an oath. This has been recognized by Congress, the exclusion law making Chinese witnesses incompetent on the proof of certain facts thereunder; frequently recognized by the courts (130 U. S. 598; 149 U. S. 729; 94 Fed. 834; 97 Fed. 580; 168 Fed. 484; 179 Fed. 370); and is as well a matter of common knowledge. Of course, to determine the fact here in question, Chinese witnesses were competent, but that is not speaking for their credibility. As to the value of the testimony of Chinese witnesses in such cases, the experienced may be permitted to share, to some extent at least, the views expressed by Judge Ray in *United States* v. *Lee Huen*, 118 Fed. 442, 463, 464.

The testimony was inherently weak, and the manner of giving it indicated that the witnesses were either ignorant of the real facts or had been "instructed." At the first hearing, which resulted in the decision of exclusion and which none of the rehearings modified, the "father," the two applicant "sons," and two other Chinese, who had come down on the

same steamer with them, testified. The first three, of course, were parties deeply in interest, and, as will be seen later, the father's testimony was somewhat discredited by former inconsistent statements made of official record. Of the other two, one seems to have testified with such extreme facility and accuracy as to indicate that he was recollecting "instructions" (R. 5), and as to the other, the board said "his answers were given in a very halting and hesitating manner, which would seem to indicate that he was not very familiar with the facts in the case," or, it may be, had forgotten what he had been told (R. 7). The board also properly (Wigmore, sec. 166, and cases cited) observed the two applicants, their peculiarities of form and feature, and found that one of the boys bore a striking resemblance to his father but that the other boy (this appellant) bore no such resemblance whatever (R. 9).

The board discredited the testimony of the father and the witnesses on another, but by no means the sole, ground, with which appellant and the court of first instance find much fault. During the investigation the board, upon an examination of the records of the Customs Bureau, found therein an "Inspector's Slip," dated July 3, 1909, attached to this merchant's affidavit, made, presumably in due course of administration, when he was examined with regard to his family prior to his departure for China, in which he stated the number, names and ages of his children, which differed from the testimony given by the mer-

chant before the board, in that—in the language of the board—

> The records of this office show that Chieng Ah Soon, when examined with regard to his family prior to his departure for China, did not mention any boy by the name of Siu, but at that time stated that his second son was named Wing; whereas, on this examination he stated that his youngest son was named Wing and his second son was Siu, one of the boys that he is bringing here now (R. 9).

It is complained that the alleged statement was not in evidence. The short answer is, as the insular supreme court found (R. 39, 40), the inspector's slip was an official record of the Immigration Bureau to which the immigration officials had access, and they could, therefore, take judicial notice of revelant facts found therein. Also, this was not a judicial but an administrative proceeding, which technical criminal procedure does not govern (*United States* v. *Williams*, 190 Fed. 897; *In re Jem Yuen*, 188 Fed. 350; *Tang Tun* v. *Edsell*, 223 U. S. 673. The Lam Tak case, 217 Fed. 468, cited in appellant's brief, contains nothing to the contrary.)

It is also said that the slip does not tend to prove that applicant is not the son of Ah Soon. It does not, if changed, explained and interpreted as appellant wishes, and much that he says is cogent. However, the board and the insular supreme court thought otherwise, and the question should be left as they

decided it. Too much stress already has been put upon this element of weakness, when there is much besides.

On the first rehearing applicant produced another Chinese witness claiming to be a friend of the family, from the same town. As to this witness, however, the board said, "the detained, when questioned with regard to this alleged friend of the family, apparently knew nothing about him at all," and the record justifies that view (R. 13, 14). The second rehearing was held, upon request, for the purpose of hearing two other witnesses, "friends of the family who, like the witness who testified at the first rehearing, were at Alongapo at the time of the original hearing." The board found, and the record bears it out, that these witnesses testified with "remarkable accuracy" as to the names and ages of all the children of Ah Soon. Having explained, however, that they came from the same town and knew his family well, their houses being very close together, they did not agree upon the people who lived in the immediate vicinity. The board "was not favorably impressed from their manner of testifying and their testimony in general. It feels that in cases of this nature it is very easy for all the parties concerned to come to an understanding beforehand with regard to the alleged facts in the case. Ah Soon had ample opportunity to strengthen his case at the first rehearing, which he failed to do."

The circumstances of obtaining the witnesses are suspicious. For aught that appears, the witnesses

at Alongapo could have been brought at the first hearing. Applicant, however, submitted his case, but thereafter asked for several rehearings, at which he produced them, one at one time and two at another. Again, it is remarkable, under all the circumstances, that so many Chinamen (six), of as many different families, could be found in the Philippines coming from the same Chinese village; and more remarkable still, that though at first appellant knew of only one such old-time friend and neighbor living at Alongapo, he subsequently found there two other friends and family intimates also hailing from the home village. Extraordinary experience for a sojourner in a strange land.

Of course, the Government was powerless to make proof of the fact in issue.

All these witnesses were before the administrative officials, who saw them, observed their manner of giving testimony. These officials were far better able to judge of the candor and truthfulness of these witnesses than any court or judge can be; and, under the decisions of this court, it was an unwarranted assumption of power to override the prior determination of the administrative officials and department to whom Congress had confided the decision of this question of fact. Their decision should stand. No bias is shown; no violation of law; no denial of a full and fair hearing; no arbitrary or illegal action; no abuse of discretion.

CONCLUSION.

The judgment of the supreme court of the Philippine Islands reversing the judgment of the court of first instance of the City of Manila and returning appellant to the custody of the Insular Collector of Customs for deportation, should be in all things affirmed.

S. T. ANSELL,
Attorney for Appellee.

WASHINGTON,
March 29, 1915.

SUI *v.* McCOY, INSULAR COLLECTOR OF CUSTOMS OF THE PHILIPPINE ISLANDS.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 54. Submitted November 1, 1915.—Decided November 29, 1915.

The Immigration and Chinese Exclusion Laws of the United States have been carried by act of Congress to the Philippine Islands and authorized to be there put into effect under appropriate legislation by the Insular Government which has so done and in express terms conferred general supervisory authority upon the Insular Collector of Customs.

There is no conflict between the provisions of the act of Congress carrying the Immigration and Chinese Exclusion Acts to the Philippines and the action of the Collector in referring questions relating to the right of a Chinese person to land and to a board in which the power was lodged to act under his supervision in matters concerning immigration.

In this case, *held* that an order for deportation of a person of Chinese descent from the Philippine Islands under the Chinese Exclusion Act was not improperly entered either because of abuse of power by the Insular Collector in referring the matter to the board of inquiry

established under the Immigration Act nor does the record show that such person was denied due process of law by the disregard of testimony produced on his behalf.
21 Phil. Isld. 361, affirmed.

THE facts, which involve the validity of an order of deportation of a Chinese person from Manila and the judgment of the Supreme Court of the Philippine Islands sustaining the same, are stated in the opinion.

Mr. Clement L. Bouvé for appellant.

Mr. S. T. Ansell for appellee.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Chieng Ah Soon, a Chinese merchant residing in Manila, proposing to go to China, took a certificate which was susceptible of being used to identify him for the purpose of reëntry in case of his return. About a year afterward, July 19, 1910, Ah Soon returned accompanied by two persons asserted to be his minor sons, one Ah Luy, said to be twenty, and the other, Ah Sui, to be sixteen years of age. His right to land was at once conceded, but the right of the two others being questioned, the Insular Collector referred the matter for inquiry and report to a board which was charged with the duty of considering such question. At once this board heard the testimony offered to prove the right to admission and concluded that Ah Luy had established such right, but that Ah Sui had not. An appeal was prosecuted to the Collector, but before the matter was decided by him on the merits a rehearing was granted presumably by the board and it again heard the matter on July 23, 1910. At the rehearing additional testimony was offered by Ah Sui, but after reëxamination of the matter and considering such testimony, the board adhered to its former conclusion. An appeal was taken

to the Collector and once more before it was decided a second rehearing was allowed and on August 10, 1910, after hearing additional testimony, the original order was again re-affirmed. This last decision was on September 3, 1910, affirmed on appeal by the Insular Collector and on September 15 an application for rehearing was refused and Ah Sui remained, therefore, in the custody of the Collector for deportation.

At once he applied for *habeas corpus* to the Court of First Instance of the City of Manila asserting the illegality of his detention for deportation and his right to land as a minor son of Ah Soon, on the following grounds: (a) An entire want of power in the Insular Collector to have referred the right to land to the board of inquiry and the resulting absolutely void character of the proceedings, whether appellate or otherwise, taken thereunder; (b) Even upon the assumption of existence of power, the absolutely void character of the action of the board and the Collector because of the entire disregard by both of the testimony establishing the paternity of Ah Soon and the resulting right of Ah Sui to land. Although ruling against the assertion of want of power, the trial court yet granted the writ of *habeas corpus* and directed the release of the applicant on the ground of a gross abuse of discretion by the board and the Collector in refusing to give effect to the testimony showing the right to enter, although there was nothing in the proof tending to the contrary. On appeal, the court below, after reviewing the testimony, held that there was no ground to support the conclusion reached by the trial court of arbitrary action and abuse of discretion by the board and the Collector in passing upon the right to land and therefore reversed the order releasing Ah Sui, thus leaving him in custody subject to deportation. 22 Phil. Isld. Rep. 361.

Our jurisdiction is invoked, first, upon the theory that the construction of statutes of the United States is neces-

sarily involved in the assertion of the want of all authority of the Insular Collector of Customs to have appointed the board which primarily determined the right to admission, and second, an assumed violation of the due process of law secured in the Philippine Islands by act of Congress arising from the action taken below because of its asserted arbitrary character caused by the alleged absolute disregard of the testimony establishing the right to enter and the absence of any testimony to the contrary. We come to dispose of these contentions separately.

1. That the Immigration and Chinese Exclusion Laws of the United States have been by act of Congress carried to the Philippine Islands and authorized to be there put into effect under appropriate legislation by the Insular Government, is not disputed. That such government has put such laws into effect and in doing so has in express terms conferred the general supervisory authority required for that purpose to be exerted upon the Insular Collector of Customs, is also not disputed. And that such officer under that authority has provided for a board of examiners primarily to determine, subject to his review, questions arising under the Immigration and Chinese Exclusion Laws, is also not disputed. The contention is based upon the supposed repugnancy to the act of Congress caused by the action of the Collector in giving to such board primary authority to examine under the Chinese Exclusion Acts. The argument is that although under the Immigration Acts provision is made for a board of examiners, no such provision is found in the Chinese Exclusion Acts, since under the latter, although an examination is provided for, it is left to be conducted under rules and regulations adopted by the appropriate authority and in the exercise of that power in the United States examining agents and not an examining board or boards are provided for by the regulations. Upon this and this alone is the conclusion rested that the making of a primary

examination under the Exclusion Acts by a board was in conflict with the United States statutes.

The extremity of the argument is well illustrated by considering the extent of the administrative power conferred by the Insular Government upon the Collector in delegating to him the authority to enforce the Chinese Exclusion Acts since by § 1 of Act No. 702 of the Philippine Commission enacted March 17, 1903, it is provided that "the Collector of Customs for the Philippine Archipelago is hereby authorized and directed . . . to employ for that purpose the personnel of the Philippine Customs Service, the provincial and military officers hereinafter provided, and such other persons as may be necessary." But aside from this we are of the opinion that the mere statement of the supposed conflict answers itself, since there is no room for real contention that there was a want of power in the Collector to appoint the board instead of an agent to aid him in the discharge of the duties devolving upon him. And we are also of the opinion that there was no ground whatever for the contention that a conflict arose between the act of Congress and the action of the Collector because the board selected was one in whom the power had been already lodged to act under the supervision of the Collector concerning matters of immigration.

2. So far as concerns the assertion that there was a violation of the due process of law secured in the Philippine Islands by act of Congress both because of the want of a hearing and the disregard of the testimony we are of the opinion that the first on the face of the record is completely answered by the statement we have made of the abundant opportunity which was afforded for a hearing, of the rehearings granted, and of the reiterated considerations which resulted by the board and the Collector, especially in view of the judicial consideration of the subject of the complaint made in the proceedings which cul-

minated in the decree which is before us for review. As to the charge of the total disregard of all the testimony, we might well content ourselves with referring to the opinion of the court below, but in view of the character of the case we say that from an examination of the record we think such contention is devoid of all merit.

Affirmed.